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# federal register

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Monday  
June 12, 1989

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Monday  
June 12, 1989



# Federal Register

**Briefing on How To Use the Federal Register—**  
For information on briefing in Washington, DC, see  
announcement on the inside cover of this issue.





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## THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** June 15; at 9:00 a.m.
- WHERE:** Office of the Federal Register,  
First Floor Conference Room,  
1100 L Street, NW., Washington, DC
- RESERVATIONS:** 202-523-5240



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The President

Proclamation 5988 of June 7, 1989

Flag Day and National Flag Week, 1989

By the President of the United States of America

## A Proclamation

While the American flag has changed through the years, the principles for which it stands have not.

The Stars and Stripes were adopted as our Nation's emblem on June 14, 1777, when the delegates to the Continental Congress resolved "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation." This design captured the character of our fledgling Nation—while each State retained its distinct identity, all were united in the struggle to secure America's freedom and independence. The stars portraying the United States as a new constellation conveyed the shining promise of this land of liberty and opportunity.

Over the years, as more States were formed and added to the Union, the flag changed in appearance. Today, it boasts 50 stars, each representing one of the 50 States. What time and history have not altered are the ideals celebrated by the Stars and Stripes: America's dedication to individual liberty and her respect for the God-given rights of all men. The flag's brilliant colors continue to reflect the diversity of the American people, while its tightly woven fabric recalls our national unity.

As our national emblem, the flag should be treated with reverence. Our regard for the flag is a measure of our respect for the men and women who devoted their lives to this noble experiment in self-government; for the veterans who have carried Old Glory into battle; and for the pioneers who have carried it across the continent, to the ends of the earth, and even into space. When we turn to the flag with hand held high and hand over heart, we give due honor to those who have fashioned and defended the great Republic for which it stands.

It is our solemn duty to ensure that the Stars and Stripes remain a symbol of a land that is good and free. We have a responsibility to ensure that generations yet unborn will be able to lift the flag with the same pride and sense of purpose as those who carried it at Yorktown, Gettysburg, Iwo Jima, and in every campaign for peace and liberty around the world. On Flag Day, and during National Flag Week, let us rededicate ourselves to the ideals of our forebears, so that our own children and grandchildren can always look to Old Glory as the emblem of "one Nation under God, indivisible, with liberty and justice for all."

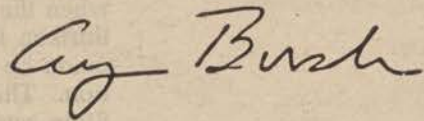
To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.



NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1989, as Flag Day and the week beginning June 11 as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America by having public gatherings and activities at which they can honor their country in an appropriate manner, including publicly reciting the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-14060

Filed 6-8-89; 2:53 pm]

Billing code 3195-01-M



# Rules and Regulations

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 918

[Docket No. FV-89-050]

#### Expenses and Assessment Rate for Marketing Order Covering Fresh Peaches Grown in Georgia

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 918 for the 1989-90 fiscal period which began March 1, 1989. This action is needed for the Georgia Peach Industry Committee (Committee) established under the order to incur operating expenses during the 1989-90 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATES:** March 1, 1989, through February 28, 1990 (§ 918.226).

**FOR FURTHER INFORMATION CONTACT:** George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530-S, Washington, DC 20090-6456; telephone 202-475-3919.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Marketing Order No. 918 (7 CFR Part 918) regulating the handling of fresh peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 18 handlers of Georgia peaches regulated under this marketing order each season, and approximately 180 peach producers in Georgia. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers of Georgia peaches may be classified as small entities.

The Georgia peach marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for each fiscal year shall apply to all assessable peaches handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of Georgia peaches. They are familiar with the Committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of Georgia peaches (in bushels). Because that rate is applied to actual shipments, it must be established

at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee unanimously recommended 1989-90 fiscal period expenditures of \$12,810 and an assessment rate of \$0.005 per bushel of assessable peaches shipped under M.O. 918. In comparison, 1988-89 fiscal period expenditures were \$11,122 and the assessment rate was \$0.005. The total budget, which is about the same as last year's, is for program administration.

Assessment income is estimated at \$7,486 for the 1989-90 fiscal period based on shipments of 1,497,200 bushels of fresh peaches. Interest income will amount to approximately \$1,587. Committee reserves funds will be utilized to cover the anticipated \$3,737 deficit for the 1989-90 fiscal period. In the 1988-89 fiscal period, assessment income totalled \$8,080 based on shipments of 1,339,000 assessable bushels of peaches and interest income totalled \$1,616.

Notice of this action was published in the Federal Register on May 15, 1989 (54 FR 20857). The comment period ended May 25, 1989. No comments were received.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the Committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the



effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

#### List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Peaches, Georgia.

For the reasons set forth in the preamble, 7 CFR Part 918 is amended as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

#### PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 918 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 918.226, is added to read as follows:

##### § 918.226 Expenses and assessment rate.

Expenses of \$12,810 by the Georgia Peach Industry Committee are authorized, and an assessment rate of \$0.005 per bushel of assessable peaches is established for the fiscal period ending February 28, 1990.

Dated: June 6, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–13809 Filed 6–9–89; 8:45 am]

BILLING CODE 3410–02–M

#### DEPARTMENT OF COMMERCE

##### Bureau of Export Administration

##### 15 CFR Parts 773 and 775

[Docket No. 90408–9109]

##### Hong Kong Import Certificate; Replacing Hong Kong Import License as Required Support Document

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** Section 775.3 of the Export Administration Regulations (EAR) currently requires that applicants obtain the official duplicate copy of Form 3, Hong Kong Import License, in support of an individual validated license application (Form BXA–622P) for the export to Hong Kong of commodities identified by the code letter “A” following the Export Control Commodity Number. This final rule changes that requirement by instructing exporters to obtain the Hong Kong Import Certificate instead of the Hong Kong Import License. This rule also changes the name

and address of the Hong Kong authorities responsible for administering the Hong Kong Import Certificate/Delivery Verification procedure.

The Bureau of Export Administration has decided to make this change because the Hong Kong Import Certificate now complies with all the documentation elements considered essential by the Coordinating Committee on Multilateral Controls (COCOM).

Consistent with the grace period provided in § 775.9(b)(2) of the EAR, applicants for export licenses to Hong Kong may continue to use the Hong Kong Import License in support of their applications through July 27, 1989. Applications received by the Office of Export Licensing after that date must be supported by a Hong Kong Import Certificate.

**EFFECTIVE DATE:** This rule is effective June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

##### SUPPLEMENTARY INFORMATION:

##### Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Hong Kong Import Certificate is issued by the Government of Hong Kong.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the

EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

##### List of Subjects in 15 CFR Parts 773 and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 773 and 775 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 773 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 775 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

##### PART 773—[AMENDED]

##### § 773.8 [Amended]

3. In § 773.8, paragraph (d)(1) is amended by removing the phrase “a Hong Kong Import License,” from the first sentence.

##### PART 775—[AMENDED]

##### § 775.3 [Amended]

4. Section 775.3(b) is amended by removing the phrase “(see § 775.3(c)(3) of this section)” immediately following the words “Hong Kong” in the list of country destinations subject to the International Import Certificate/Delivery Verification Certificate System requirements.



5. Section 775.3(c) is amended by removing the phrase "Hong Kong Import License," from paragraph (c)(1) and by removing paragraph (c)(3).

6. Section 775.3(g)(1)(ii) is amended by removing the phrase "(or Hong Kong Import License)" from the first sentence of the certification and by removing the phrase "or Hong Kong Import License" from the second sentence of the certification.

7. Section 775.3(g)(2)(i) is amended by removing the phrase "(or Hong Kong Import License)" from the first sentence of the certification and by removing the phrase "or Hong Kong Import License" from the second sentence of the certification.

8. Section 775.3(g)(2)(ii) is amended by removing the phrases "(or Hong Kong Import License)" and "or Hong Kong Import License" from the certification.

#### § 775.9 [Amended]

9. Section 775.9(f)(2) is amended by removing the phrase "(or Hong Kong Import License)" from the second certification.

#### Supplement No. 1 to Part 775— [Amended]

10. Supplement No. 1 to Part 775 is amended by revising the entry for Hong Kong to read as follows:

#### Authorities Administering Import Certificate/Delivery Verification System in Foreign Countries<sup>1</sup>

Country	IC/DV authorities	System administered <sup>2</sup>
Hong Kong.....	Trade Department, Ocean Centre, Canton Road, Tsimshatsui, Kowloon, Hong Kong.	IC/DV

<sup>2</sup> IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 6, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export  
Administration.

[FR Doc. 89-13808 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

<sup>1</sup> Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198 or at any U.S. Department of Commerce District Office or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

#### 15 CFR Part 799

[Docket No. 80862-8162]

#### Revision of Validated License Controls on Low-Level Machine-Vision Systems

AGENCY: Bureau of Export  
Administration, Commerce.

ACTION: Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain low-level machine-vision systems controlled on the CCL when used as computer "related equipment" in ECCN 1565A(h). These commodities will now require a validated license for export only to destinations in Country Groups Q, S, W, Y and Z, the People's Republic of China, and Afghanistan for national security reasons. This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended.

Notice of the foreign availability determination on this equipment is published in the Notices section of this Federal Register.

**EFFECTIVE DATE:** This rule is effective June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Maurice Cook, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

#### SUPPLEMENTARY INFORMATION:

##### Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in final form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for

public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0694-0005.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

#### List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

#### PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

#### Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the *Validated License Required* paragraph to read "Country Groups QSTVWYZ. However, a validated license is required only to destinations in Country Groups QSWYZ, the People's Republic of China, and Afghanistan for low-level machine-vision systems controlled under



paragraph (h) that do not exceed any of the following:

- (1) Total number of image elements—65,536;
- (2) Shades of gray—256; or
- (3) Frames per second—3.3."

Dated: June 7, 1989.

James M. LeMunyon,  
Deputy Assistant Secretary for Export  
Administration.

[FR Doc. 89-13900 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Ch. I

[Docket No. 87N-0246]

#### Certain Food, Cosmetic, and Miscellaneous Regulations; Editorial Amendments

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending certain of its food, cosmetic, and miscellaneous regulations to correct cross-references and typographical errors and to update the titles, mailing symbols, and addresses of certain organizations. This action will improve the accuracy and clarity of the regulations.

**DATES:** Effective June 12, 1989, except for: 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (other than § 145.3), 146, 150, 155 (other than § 155.3), 156 (other than § 156.3), 160, 161, 163, 164, 166, 168, and 169 (other than § 169.3), which are effective on July 13, 1989; written objections and requests for a hearing to 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 by July 12, 1989.

**ADDRESSES:** Written objections to 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

**SUPPLEMENTARY INFORMATION:** FDA is revising certain of its food, cosmetic, and miscellaneous regulations to correct cross-references and typographical errors and to update the titles, mailing symbols, and addresses of certain organizations. The affected regulations are sections within 21 CFR Chapter I.

Publication of this document constitutes final action on the changes to 21 CFR Parts 70, 71, 80, 101, 102, 106, 110, 114, 130, 170, 181, 184, 189, 701, 1240, and 1250 and §§ 145.3, 155.3, 156.3, and 169.3 under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure on these corrections are unnecessary because FDA is merely correcting outdated cross-references, typographical errors, and titles, mailing symbols, and addresses of certain organizations.

The portions of the final rule that revise 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 are being promulgated under authority of sections 409 and 701(e) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 348 and 371(e)), which require the agency to consider objections to final rulemaking. The agency notes, however, that none of the changes that the agency is making in these parts effect a substantive change. Any person who will be adversely affected by the revisions to these parts may at any time on or before July 12, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this

document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the authority of the Federal Food, Drug, and Cosmetic Act, the Federal Import Milk Act, and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

#### PART 70—COLOR ADDITIVES

1. The authority citation for 21 CFR Part 70 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

##### § 70.19 [Amended]

2. Section 70.19 *Fees for listing* is amended in paragraph (p) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

#### PART 71—COLOR ADDITIVE PETITIONS

3. The authority citation for 21 CFR Part 71 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

##### § 71.1 [Amended]

4. Section 71.1 *Petitions* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

#### PART 80—COLOR ADDITIVE CERTIFICATION

5. The authority citation for 21 CFR Part 80 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

##### § 80.10 [Amended]

6. Section 80.10 *Fees for certification services* is amended in paragraph (d) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

##### § 80.21 [Amended]

7. Section 80.21 *Request for certification* is amended in paragraphs (j) (1), (2), (3), and (4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

#### PART 101—FOOD LABELING

8. The authority citation for 21 CFR Part 101 continues to read as follows:



Authority: Secs. 4, 6, Pub. L. 89-755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 403, 701, Pub. L. 717, 52 Stat. 1047-1048 as amended, 1055-1056 as amended (21 U.S.C. 343, 371); 21 CFR 5.10 and 5.11; § 101.11 is issued only under secs. 201(s), 403(p), 409, 701(a), Pub. L. 717, 52 Stat. 1055, 72 Stat. 1784-1788 as amended 91 Stat. 1453 (21 U.S.C. 321(s), 343(p), 348, 371(a)) and Pub. L. 95-203, 91 Stat. 1451-1454 (21 U.S.C. 301 note); § 101.100(a)(4) is issued only under secs. 201 (n) and (s), 403, 409, 701, 52 Stat. 1041 as amended, 1047-1048 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321 (n) and (s), 343, 348, 371).

#### § 101.9 [Amended]

9. Section 101.9 *Nutrition labeling of food* is amended in paragraph (a)(2) by removing "§ 105.3(a)(1)(iii) of this section" and replacing it with "§ 105.3(a)(1)(iii) of this chapter" and in paragraphs (c)(4) and (8) (i) and (ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### § 101.22 [Amended]

10. Section 101.22 *Foods; labeling of spices, flavorings, colorings and chemical preservatives* is amended in paragraph (a)(3) by removing "182.30,".

#### § 101.25 [Amended]

11. Section 101.25 *Labeling of foods in relation to fat and fatty acid and cholesterol content* is amended in paragraph (e)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" everywhere that it appears.

### PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

12. The authority citation for 21 CFR Part 102 continues to read as follows:

Authority: Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)); 21 CFR 5.10 and 5.11.

#### § 102.23 [Amended]

13. Section 102.23 *Peanut spreads* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and in paragraph (c)(5) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

### PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

14. The authority citation for 21 CFR Part 103 continues to read as follows:

Authority: Secs. 401, 403, 701, 52 Stat. 1046-1048 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 343, 371); 21 CFR 5.10.

#### § 103.35 [Amended]

15. Section 103.35 *Bottled water* is amended in the introductory text of paragraph (b) by removing "Division of Food Technology, Bureau of Foods (HFF-210)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)".

### PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

16. The authority citation for 21 CFR Part 106 continues to read as follows:

Authority: Secs. 412, 701(a), 52 Stat. 1055, 94 Stat. 1190 (21 U.S.C. 350a, 371(a)).

#### § 106.30 [Amended]

17. Section 106.30 *Finished product evaluation* is amended in paragraph (c)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### § 106.120 [Amended]

18. Section 106.120 *New formulations and reformulations* is amended in paragraphs (a) and (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

### PART 108—EMERGENCY PERMIT CONTROL

19. The authority citation for 21 CFR Part 108 continues to read as follows:

Authority: Secs. 402, 404, 701, 52 Stat. 1046-1047 as amended, 1048, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 342, 344, 371).

#### § 108.5 [Amended]

20. Section 108.5 *Determination of the need for a permit* is amended in paragraph (a)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition (HFF-310)".

#### § 108.25 [Amended]

21. Section 108.25 *Acidified foods* is amended in paragraph (c)(1) by removing "FD-2541", and "Bureau of Foods, Industry Guidance Branch (HFF-342)," everywhere that it appears, and replacing it with "FDA 2541" and

"Center for Food Safety and Applied Nutrition, LACF Registration Coordinator (HFF-233)," respectively, in paragraph (c)(2) by removing "form FD-2541c (food canning establishment and process filing for other than still retort and agitating processes)." and "Bureau of Foods, Industry Guidance Branch (HFF-342)," everywhere that it appears, and replacing it with "form FDA 2541a (food canning establishment process filing form for all methods except aseptic)." and "Center for Food Safety and Applied Nutrition, LACF Registration Coordinator (HFF-233)," respectively, and in paragraph (h) by removing "Food Safety and Quality Service" and replacing it with "Food Safety and Inspection Service".

22. Section 108.35 *Thermal processing of low-acid foods packaged in hermetically sealed containers* is amended in paragraph (c)(1) by removing "FD-2541", and replacing it with "FDA 2541", by removing "Bureau of Foods, Industry Guidance Branch, HFF-326" and "Bureau of Foods, Division of Food Technology, HFF-419" and replacing them with "Center for Food Safety and Applied Nutrition, LACF Registration Coordinator HFF-233", by revising sentences two through four of the introductory text of paragraph (c)(2), in paragraph (c)(2)(ii) by removing "Bureau of Foods, 200 C St. SW., HFF-419," and replacing it with "Center for Food Safety and Applied Nutrition, DFCT, HFF-414, 200 C St. SW.," and in paragraph (j)(1) by removing "shall filed with the Bureau of Foods" and replacing it with "shall file with the Center for Food Safety and Applied Nutrition", to read as follows:

#### § 108.35 Thermal processing of low-acid foods packaged in hermetically sealed containers.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* This information shall be submitted on the following forms as appropriate: Form FDA 2541a (food canning establishment process filing for all methods except aseptic), or Form FDA 2541c (food canning establishment process filing for aseptic systems). These forms are available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, LACF Registration Coordinator, HFF-233, 200 C St. SW., Washington, DC 20204, or at any Food and Drug Administration district office. The completed form(s) shall be submitted to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, LACF Registration



Coordinator, HFF-233, 200 C St. SW., Washington, DC 20204.

#### PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

23. The authority citation for 21 CFR Part 109 continues to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 701, 52 Stat. 1045-1046 as amended, 1049 as amended, 1055-1056 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended (21 U.S.C. 336, 342(a), 346, 346a, 348, 371).

##### § 109.30 [Amended]

24. Section 109.30 *Tolerances for polychlorinated biphenyls (PCB's)* is amended in paragraph (c) by removing "Bureau of Foods", "Bureau", and "Bureau's" and replacing it with "Center for Food Safety and Applied Nutrition", "Center", and "Center's", respectively, everywhere that they appear, and in paragraph (d) by removing "Program Manager for Chemical Contaminants" and replacing it with "Contaminants Program Unit" and by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" everywhere that it appears.

#### PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

25. The authority citation for 21 CFR Part 110 continues to read as follows:

Authority: Secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043-1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a)); sec. 361, 58 Stat. 703 (42 U.S.C. 264); 21 CFR 5.10, 5.11.

##### § 110.10 [Amended]

26. Section 110.10 *Personnel* is amended in paragraph (b)(4) by removing "insecure" and replacing it with "unsecured".

27. Section 110.35 is amended in the introductory text of paragraph (b)(1) by revising the third sentence up to the colon to read as follows:

##### § 110.35 Sanitary operations.

(b) \* \* \*

(1) \* \* \* Only the following toxic materials may be used or stored in a plant where food is processed or exposed: \* \* \*

#### PART 114—ACIDIFIED FOODS

28. The authority citation for 21 CFR Part 114 continues to read as follows:

Authority: Secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a)).

##### § 114.90 [Amended]

29. Section 114.90 *Methodology* is amended in paragraph (a)(4)(ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### PART 130—FOOD STANDARDS: GENERAL

30. The authority citation for 21 CFR Part 130 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

##### § 130.17 [Amended]

31. Section 130.17 *Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity* is amended in the introductory text of paragraph (c) by removing "Division of Food Technology, Bureau of Foods (HFF-211)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)".

#### PART 131—MILK AND CREAM

32. The authority citation for 21 CFR Part 131 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).

##### § 131.110 [Amended]

33. Section 131.110 *Milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.111 [Amended]

34. Section 131.111 *Acidified milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.112 [Amended]

35. Section 131.112 *Cultured milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.115 [Amended]

36. Section 131.115 *Concentrated milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.120 [Amended]

37. Section 131.120 *Sweetened condensed milk* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.122 [Amended]

38. Section 131.122 *Sweetened condensed skimmed milk* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.123 [Amended]

39. Section 131.123 *Lowfat dry milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.125 [Amended]

40. Section 131.125 *Nonfat dry milk* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.127 [Amended]

41. Section 131.127 *Nonfat dry milk fortified with vitamins A and D* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.130 [Amended]

42. Section 131.130 *Evaporated milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

##### § 131.132 [Amended]

43. Section 131.132 *Evaporated skimmed milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin



Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.135 [Amended]

44. Section 131.135 *Lowfat milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.136 [Amended]

45. Section 131.136 *Acidified lowfat milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.138 [Amended]

46. Section 131.138 *Cultured lowfat milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.143 [Amended]

47. Section 131.143 *Skim milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.144 [Amended]

48. Section 131.144 *Acidified skim milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.146 [Amended]

49. Section 131.146 *Cultured skim milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.147 [Amended]

50. Section 131.147 *Dry whole milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.149 [Amended]

51. Section 131.149 *Dry cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.150 [Amended]

52. Section 131.150 *Heavy cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.155 [Amended]

53. Section 131.155 *Light cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.157 [Amended]

54. Section 131.157 *Light whipping cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.160 [Amended]

55. Section 131.160 *Sour cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.162 [Amended]

56. Section 131.162 *Acidified sour cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.170 [Amended]

57. Section 131.170 *Egg nog* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.180 [Amended]

58. Section 131.180 *Half-and-half* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.185 [Amended]

59. Section 131.185 *Sour half-and-half* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.187 [Amended]

60. Section 131.187 *Acidified sour half-and-half* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.200 [Amended]

61. Section 131.200 *Yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.203 [Amended]

62. Section 131.203 *Lowfat yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.206 [Amended]

63. Section 131.206 *Nonfat yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 133—CHEESES AND RELATED CHEESE PRODUCTS**

64. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

§ 133.5 [Amended]

65. Section 133.5 *Methods of analysis* is amended in the text of the introductory paragraph by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 135—FROZEN DESSERTS**

66. The authority citation for 21 CFR Part 135 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919, 1055-1056 as amended (21 U.S.C. 341, 371).



**§ 135.110 [Amended]**

67. Section 135.110 *Ice cream and frozen custard* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 135.130 [Amended]**

68. Section 135.130 *Mellorine* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 136—BAKERY PRODUCTS**

69. The authority citation for 21 CFR Part 136 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919, as amended (21 U.S.C. 341, 371(e)).

**§ 136.110 [Amended]**

70. Section 136.110 *Bread, rolls, and buns* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 136.160 [Amended]**

71. Section 136.160 *Raisin bread, rolls, and buns* is amended in paragraph (a)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 137—CEREAL FLOURS AND RELATED PRODUCTS**

72. The authority citation for 21 CFR Part 137 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 137.105 [Amended]**

73. Section 137.105 *Flour* is amended in the introductory text of paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.180 [Amended]**

74. Section 137.180 *Self-rising flour* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.190 [Amended]**

75. Section 137.190 *Cracked wheat* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.195 [Amended]**

76. Section 137.195 *Crushed wheat* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.200 [Amended]**

77. Section 137.200 *Whole wheat flour* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.211 [Amended]**

78. Section 137.211 *White corn flour* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.230 [Amended]**

79. Section 137.230 *Corn grits* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.250 [Amended]**

80. Section 137.250 *White corn meal* is amended in the introductory text of paragraph (b)(1) and in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.270 [Amended]**

81. Section 137.270 *Self-rising white corn meal* is amended in the introductory text of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.300 [Amended]**

82. Section 137.300 *Farina* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200

Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 137.350 [Amended]**

83. Section 137.350 *Enriched rice* is amended in paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 139—MACARONI AND NOODLE PRODUCTS**

84. The authority citation for 21 CFR Part 139 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, as amended, 1055-1056, as amended (21 U.S.C. 341, 371).

**§ 139.110 [Amended]**

85. Section 139.110 *Macaroni products* is amended in paragraph (a)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 139.117 [Amended]**

86. Section 139.117 *Enriched macaroni products with fortified protein* is amended in the introductory text of paragraph (a)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 139.150 [Amended]**

87. Section 139.150 *Noodle products* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 145—CANNED FRUITS**

88. The authority citation for 21 CFR Part 145 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10.

**§ 145.3 [Amended]**

89. Section 145.3 *Definitions* is amended in paragraph (m) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 145.110 [Amended]**

90. Section 145.110 *Canned applesauce* is amended in paragraph (a)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington,



DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 145.125 [Amended]**

91. Section 145.125 *Canned cherries* is amended in paragraph (b)(2)(ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 145.135 [Amended]**

92. Section 145.135 *Canned fruit cocktail* is amended in paragraph (b)(1)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 145.145 [Amended]**

93. Section 145.145 *Canned grapefruit* is amended in the introductory text of paragraph (a)(3)(iii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 146—CANNED FRUIT JUICES**

94. The authority citation for 21 CFR Part 146 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 146.113 [Amended]**

95. Section 146.113 *Canned fruit nectars* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 146.114 [Amended]**

96. Section 146.114 *Lemon juice* is amended in paragraph (a)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 146.120 [Amended]**

97. Section 146.120 *Frozen concentrate for lemonade* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 146.185 [Amended]**

98. Section 146.185 *Pineapple juice* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS**

99. The authority citation for 21 CFR Part 150 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 150.110 [Amended]**

100. Section 150.110 *Fruit butter* is amended in paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 150.140 [Amended]**

101. Section 150.140 *Fruit jelly* is amended in paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 150.160 [Amended]**

102. Section 150.160 *Fruit preserves and jams* is amended in paragraph (d)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 155—CANNED VEGETABLES**

103. The authority citation for 21 CFR Part 155 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 155.3 [Amended]**

104. Section 155.3 *Definitions* is amended in paragraphs (a) and (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 155.120 [Amended]**

105. Section 155.120 *Canned green beans and canned wax beans* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 155.130 [Amended]**

106. Section 155.130 *Canned corn* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 155.170 [Amended]**

107. Section 155.170 *Canned peas* is amended in paragraph (b)(1)(vi) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 156—VEGETABLE JUICES**

108. The authority citation for 21 CFR Part 156 is revised to read as follows:

Authority: Secs. 401, 701(e) (21 U.S.C. 341, 371(e)).

**§ 156.3 [Amended]**

109. Section 156.3 *Definitions* is amended in paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 160—EGGS AND EGG PRODUCTS**

110. The authority citation for 21 CFR Part 160 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, 1055-1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10, 5.61.

**§ 160.145 [Amended]**

111. Section 160.145 *Dried egg whites* is amended in paragraph (c)(2) by removing "Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 160.180 [Amended]**

112. Section 160.180 *Egg yolks* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 161—FISH AND SHELLFISH**

113. The authority citation for 21 CFR Part 161 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 161.145 [Amended]**

114. Section 161.145 *Canned oysters* is amended in paragraph (c)(3) by removing "P.O. Box 540, Benjamin



Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 161.173 [Amended]**

115. Section 161.173 *Canned wet pack shrimp in transparent or nontransparent containers* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 161.175 [Amended]**

116. Section 161.175 *Frozen raw breaded shrimp* is amended in paragraph (g)(1)(v) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 161.190 [Amended]**

117. Section 161.190 *Canned tuna* is amended in paragraphs (a)(2) and (7)(iii) by removing "Division of Food Technology, Bureau of Foods (HFF-210)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)" and in the introductory text of paragraph (a)(7) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 163—CACAO PRODUCTS**

118. The authority citation for 21 CFR Part 163 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

**§ 163.110 [Amended]**

119. Section 163.110 *Cacao nibs* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 163.111 [Amended]**

120. Section 163.111 *Chocolate liquor* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 163.112 [Amended]**

121. Section 163.112 *Breakfast cocoa* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 164—TREE NUT AND PEANUT PRODUCTS**

122. The authority citation for 21 CFR Part 164 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended by 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 341, 371).

**§ 164.150 [Amended]**

123. Section 164.150 *Peanut butter* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 166—MARGARINE**

124. The authority citation for 21 CFR Part 166 is revised to read as follows:

Authority: Secs. 201, 401, 403, 407, 701 (21 U.S.C. 321, 341, 343, 347, 371).

**§ 166.110 [Amended]**

125. Section 166.110 *Margarine* is amended in the introductory text of paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 168—SWEETENERS AND TABLE SIRUPS**

126. The authority citation for 21 CFR Part 168 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, as amended, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).

**§ 168.111 [Amended]**

127. Section 168.111 *Dextrose monohydrate* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 168.120 [Amended]**

128. Section 168.120 *Glucose sirup* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 168.122 [Amended]**

129. Section 168.122 *Lactose* is amended in the introductory text of paragraph (d)(1) by removing "P.O. Box 540, Benjamin Franklin Station,

Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 169—FOOD DRESSINGS AND FLAVORINGS**

130. The authority citation for 21 CFR Part 169 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056, as amended by 70 Stat. 919 (21 U.S.C. 341, 371).

**§ 169.3 [Amended]**

131. Section 169.3 *Definitions* is amended in paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 170—FOOD ADDITIVES**

132. The authority citation for 21 CFR Part 170 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a) (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.10.

**§ 170.3 [Amended]**

133. Section 170.3 *Definitions* is amended in the introductory texts of paragraphs (n) and (o) by removing "22151" and replacing it with "22161".

**§ 170.6 [Amended]**

134. Section 170.6 *Opinion letters on food additive status* is amended in paragraph (e) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 170.38 [Amended]**

135. Section 170.38 *Determination of food additive status* is amended in paragraph (b)(3) by removing "Part 134" and replacing it with "Part 184".

**PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION**

136. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 172.105 [Amended]**

137. Section 172.105 *Anoxomer* is amended in paragraphs (b) (1), (2), and (3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 172.250 [Amended]**

138. Section 172.250 *Petroleum naphtha* is amended in footnote 1 to paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".



**§ 172.320 [Amended]**

139. Section 172.320 *Amino acids* is amended in paragraphs (b)(2) and (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" and in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.340 [Amended]**

140. Section 172.340 *Fish protein isolate* is amended in footnote 1 to the introductory text of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.372 [Amended]**

141. Section 172.372 *N-Acetyl-L-methionine* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.385 [Amended]**

142. Section 172.385 *Whole fish protein concentrate* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.510 [Amended]**

143. Section 172.510 *Natural flavoring substances and natural substances used in conjunction with flavors* is amended in footnote 1 to the table of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.859 [Amended]**

144. Section 172.859 *Sucrose fatty acid esters* is amended in paragraphs (b) (1), (5), and (9) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 172.860 [Amended]**

145. Section 172.860 *Fatty acids* is amended in paragraphs (c)(1) and (2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 172.864 [Amended]**

146. Section 172.864 *Synthetic fatty alcohols* is amended in footnote 1 to

paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 172.878 [Amended]**

147. Section 172.878 *White mineral oil* is amended in paragraph (a)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 172.882 [Amended]**

148. Section 172.882 *Synthetic isoparaffinic petroleum hydrocarbons* is amended in paragraph (a) in the entry for "Synthetic isoparaffinic petroleum hydrocarbons" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 172.886 [Amended]**

149. Section 172.886 *Petroleum wax* is amended in footnote 1 to paragraph (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION**

150. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 173.60 [Amended]**

151. Section 173.60 *Dimethylamine-epichlorohydrin copolymer* is amended in paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 173.145 [Amended]**

152. Section 173.145 *Alpha-Galactosidase derived from Mortierella vinaceae var. raffinoseutilizer* is amended in footnote 1 to paragraph (b) by removing "30852" and replacing it with "20852".

**§ 173.160 [Amended]**

153. Section 173.160 *Candida guilliermondii* is amended in footnote 1 to paragraph (b)(1) by removing "30852" and replacing it with "20852" and in paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 173.165 [Amended]**

154. Section 173.165 *Candida lipolytica* is amended in paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 173.395 [Amended]**

155. Section 173.395 *Trifluoromethane sulfonic acid* is

amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS**

156. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 175.300 [Amended]**

157. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(ix) in the entry for "Maleic anhydride adduct of polypropylene" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS**

158. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 176.170 [Amended]**

159. Section 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* is amended in the introductory text of paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 176.210 [Amended]**

160. Section 176.210 *Defoaming agents used in the manufacture of paper and paperboard* is amended in paragraph (d)(3) by removing "Kersosine" and replacing it with "Kerosine".

**PART 177—INDIRECT FOOD ADDITIVES: POLYMERS**

161. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 177.1020 [Amended]**

162. Section 177.1020 *Acrylonitrile/butadiene/styrene co-polymer* is amended in paragraphs (c)(2) and (d)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".



**§ 177.1030 [Amended]**

163. Section 177.1030 *Acrylonitrile/butadiene/styrene/ methyl methacrylate copolymer* is amended in paragraphs (c)(2) and (d)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1050 [Amended]**

164. Section 177.1050 *Acrylonitrile/styrene copolymer modified with butadiene/styrene elastomer* is amended in the table of paragraph (b), in paragraphs (c)(2) and (3), in the introductory text of paragraph (d), and in paragraph (e)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1330 [Amended]**

165. Section 177.1330 *Ionomeric resins* is amended in paragraph (e)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1390 [Amended]**

166. Section 177.1390 *Laminate structures for use at temperatures of 250 °F and above* is amended in paragraph (c)(3)(i)(a)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1480 [Amended]**

167. Section 177.1480 *Nitrile rubber modified acrylonitrile-methyl acrylate copolymers* is amended in the introductory text of paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1550 [Amended]**

168. Section 177.1550 *Perfluorocarbon resins* is amended in footnote 1 to paragraph (e) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1630 [Amended]**

169. Section 177.1630 *Polyethylene phthalate polymers* is amended in paragraph (e)(4)(iii) in the entry for "Ethylene azelate-terephthalate copolymer" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1635 [Amended]**

170. Section 177.1635 *Poly(p-methylstyrene) and rubber-modified poly(p-methylstyrene)* is amended in paragraph (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1810 [Amended]**

171. Section 177.1810 *Styrene block polymers* is amended in paragraph (c)(2)(ii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1820 [Amended]**

172. Section 177.1820 *Styrene-maleic anhydride copolymers* is amended in paragraph (c)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.1990 [Amended]**

173. Section 177.1990 *Vinylidene chloride/methyl acrylate copolymers* is amended in paragraph (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.2210 [Amended]**

174. Section 177.2210 *Ethylene polymer, chlorosulfonated* is amended in paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.2450 [Amended]**

175. Section 177.2450 *Polyamide-imide resins* is amended in paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and in paragraphs (b) (2) and (3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.2470 [Amended]**

176. Section 177.2470 *Polyoxymethylene copolymer* is amended in paragraph (c)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.2480 [Amended]**

177. Section 177.2480 *Polyoxymethylene homopolymer* is amended in paragraph (d)(2)(i) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 177.2490 [Amended]**

178. Section 177.2490 *Polyphenylene sulfide resins* is amended in the introductory text of paragraph (a) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS**

179. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Sections 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 349); 21 CFR 5.10 and 5.61.

**§ 178.1010 [Amended]**

180. Section 178.1010 *Sanitizing solutions* is amended in paragraph (b)(16) by removing "ethylenediaminetetraacetate" and "av[erage]" and replacing it with "ethylenediaminetetraacetate" and "average", respectively.

**§ 178.2650 [Amended]**

181. Section 178.2650 *Organotin stabilizers in vinyl chloride plastics* is amended in paragraph (b)(1)(ii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3297 [Amended]**

182. Section 178.3297 *Colorants for polymers* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3480 [Amended]**

183. Section 178.3480 *Fatty alcohols, synthetic* is amended in the introductory text of paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3610 [Amended]**

184. Section 178.3610. *α-Methylstyrene-vinyltoluene resins, hydrogenated* is amended in paragraph (a) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3620 [Amended]**

185. Section 178.3620 *Mineral oil* is amended in paragraph (b)(1)(ii) and in footnote 1 to paragraph (c)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3690 [Amended]**

186. Section 178.3690 *Pentaerythritol adipate-stearate* is amended in paragraph (b)(4) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Boulevard, Suite 400, Arlington, VA 22201-3301".

**§ 178.3770 [Amended]**

187. Section 178.3770 *Polyhydric alcohol diesters of oxidatively refined*



(Gersthoff process) montan wax acids is amended in footnote 1 to paragraph (a)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3780 [Amended]**

188. Section 178.3780 *Polyhydric alcohol esters of long chain monobasic acids* is amended in paragraph (b)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3870 [Amended]**

189. Section 178.3870 *Rosins and rosin derivatives* is amended in paragraph (f)(6)(iv) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**§ 178.3910 [Amended]**

190. Section 178.3910 *Surface lubricants used in the manufacture of metallic articles* is amended in footnote 1 to paragraph (a)(4)(iii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", and in the introductory text of paragraph (b) by removing "sampling" and replacing it with "stamping".

**PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD**

191. The authority citation for 21 CFR Part 179 continues to read as follows:

**Authority:** Sections 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10; §§ 179.25 and 179.26 also are issued under sections 402, 403, 703, 704, 52 Stat. 1046-1048 as amended, 1057, 67 Stat. 477 as amended (21 U.S.C. 342, 343, 373, 374); 21 CFR 5.10, 5.11.

**§ 179.45 [Amended]**

192. Section 179.45 *Packaging materials for use during the irradiation of prepackaged foods* is amended in the introductory text of paragraph (b)(6) by removing "§ 177.1630(d)(4)(i)" and replacing it with "§§ 177.1630(e)(4) (i) and (ii)".

**PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY**

193. The authority citation for 21 CFR Part 180 continues to read as follows:

**Authority:** Sections 409, 701, 52 Stat. 1055-1056 as amended, 72 Stat. 1785-1788 as amended (21 U.S.C. 348, 371).

**§ 180.22 [Amended]**

194. Section 180.22 *Acrylonitrile copolymers* is amended in the introductory text of paragraph (a) and in

paragraphs (b), (e), and (f)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" and in paragraph (f)(2) by removing "Part 2" and replacing it with "Part 10".

**PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS**

195. The authority citation for 21 CFR Part 181 continues to read as follows:

**Authority:** Sections 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

**§ 181.32 [Amended]**

196. Section 181.32 *Acrylonitrile copolymers and resins* is amended in the introductory text of paragraph (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

**PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE**

197. The authority citation for 21 CFR Part 184 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

**§ 184.1408 [Amended]**

198. Section 184.1408 *Licorice and licorice derivatives* is amended in paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 184.1979 [Amended]**

199. Section 184.1979 *Whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 184.1979a [Amended]**

200. Section 184.1979a *Reduced lactose whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 184.1979b [Amended]**

201. Section 184.1979b *Reduced minerals whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington,

DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 184.1979c [Amended]**

202. Section 184.1979c *Whey protein concentrate* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD**

203. The authority citation for 21 CFR Part 189 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

**§ 189.1 [Amended]**

204. Section 189.1 *Substances prohibited from use in human food* is amended in paragraph (c) by removing "Part 2" and replacing it with "Part 10".

**§ 189.110 [Amended]**

205. Section 189.110 *Calamus and its derivatives* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and "Bureau of Foods" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and "Center for Food Safety and Applied Nutrition", respectively.

**§ 189.130 [Amended]**

206. Section 189.130 *Coumarin* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 189.135 [Amended]**

207. Section 189.135 *Cyclamate and its derivatives* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 189.145 [Amended]**

208. Section 189.145 *Dulcin* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

**§ 189.155 [Amended]**

209. Section 189.155 *Monochloroacetic acid* is amended in



paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### § 189.165 [Amended]

210. Section 189.165 *Nordihydroguaiaretic acid (NDGA)* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### § 189.175 [Amended]

211. Section 189.175 *P-4000* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

#### § 189.180 [Amended]

212. Section 189.180 *Safrole* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

#### § 189.190 [Amended]

213. Section 189.190 *Thiourea* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

### PART 701—COSMETIC LABELING

214. The authority citation for 21 CFR Part 701 continues to read as follows:

Authority: Secs. 601, 602, 701(a), 704, 52 Stat. 1054, as amended, 1055, 1057, as amended; 21 U.S.C. 361, 362, 371(a), 374.

#### § 701.3 [Amended]

215. Section 701.3 *Designation of ingredients* is amended in paragraph (c)(2)(iv) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

### PART 1240—CONTROL OF COMMUNICABLE DISEASES

216. The authority citation for 21 CFR Part 1240 continues to read as follows:

Authority: Secs. 215, 311, 361, 368, 58 Stat. 690, 693, 703 as amended, 706 (42 U.S.C. 216, 243, 264, 271); 21 CFR 5.10, 5.11.

217. The Cross-References following the Table of Contents for Part 1240 is revised to read as follows:

Cross-References: For Department of Health and Human Services regulations relating to foreign quarantine, sanitation measures, and control of communicable diseases, see Centers for Disease Control's

requirements as set forth in 42 CFR Parts 71 and 72.

#### § 1240.10 [Amended]

218. Section 1240.10 *Effective bactericidal treatment* is amended in paragraph (f) by removing "Surgeon General" and replacing it with "Commissioner of Food and Drugs".

#### § 1240.62 [Amended]

219. Section 1240.62 *Turtles intrastate and interstate requirements* is amended in paragraphs (c)(1) (i), (ii), (iii), (iv), and (v) and (c)(2) by removing "Bureau of Foods" and "Bureau" and replacing them with "Center for Food Safety and Applied Nutrition" and "Center", respectively, everywhere that they appear.

220. Section 1240.70 is amended by revising paragraph (a) to read as follows:

#### § 1240.70 Lather brushes.

(a) *General requirements.* A person shall not transport, or offer for transportation by the owner or operator of a conveyance, nor shall the owner or operator of a conveyance knowingly transport for another person, in interstate traffic lather brushes made from animal hair or bristles unless such brushes have been manufactured in the United States, its territories, or possessions in compliance with the provisions of paragraphs (b), (c), (d), (e), and (f) of this section.

### PART 1250—INTERSTATE CONVEYANCE SANITATION

221. The authority citation for 21 CFR Part 1250 continues to read as follows:

Authority: Secs. 215, 311, 361, 368, 58 Stat. 690, 693, 703, as amended, 706 (42 U.S.C. 216, 243, 264, 271).

222. The Cross-References following the Table of Contents for Part 1250 is revised to read as follows:

Cross-References: For Department of Health and Human Services regulations relating to foreign quarantine and control of communicable diseases, see Centers for Disease Control's requirements as set forth in 42 CFR Parts 71 and 72.

#### § 1250.51 [Amended]

223. Section 1250.51 *Railroad conveyances; discharge of wastes* is amended in paragraph (d) by removing "Bureau of Foods, Sub-Program Manager, Interstate Travel Sanitation" and replacing it with "Center for Food Safety and Applied Nutrition, Manager, Interstate Travel Sanitation Sub-

Program", in paragraphs (f) (1) and (2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", in the introductory text of paragraph (f)(3) by removing "Bureau of Foods, Sub-Program Managers, Interstate Travel Sanitation" and replacing it with "Center for Food Safety and Applied Nutrition, Manager, Interstate Travel Sanitation Sub-Program", in paragraph (f)(4)(i) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", and in paragraph (f)(4)(iii) by removing "Subpart F of Part 2" and replacing it with "Part 16" and by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

Dated: May 25, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13830 Filed 6-9-89; 6:45 am]

BILLING CODE 4160-01-M

### 21 CFR Part 510

#### Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Schering Corp. to Schering-Plough Corp.

EFFECTIVE DATE: June 12, 1989.

#### FOR FURTHER INFORMATION CONTACT:

Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Schering Plough Corp., Galloping Hill Rd., Kenilworth, NJ 07033, advised FDA of a change of corporate name from Schering Corp. to Schering-Plough Corp. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

#### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:



**PART 510—NEW ANIMAL DRUGS**

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Schering Corp." and in paragraph (c)(2) in the entry for "000061" by revising the sponsor name to read "Schering-Plough Corp."

Dated: June 5, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-13803 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M

**21 CFR Part 558****New Animal Drugs for Use in Animal Feeds; Salinomycin, Chlortetracycline, and Roxarsone**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. providing for the use of previously approved salinomycin, chlortetracycline, and roxarsone Type A medicated articles to make Type C medicated feeds for broilers. The feeds are indicated for use for the prevention of coccidiosis and as an aid in the reduction of mortality due to certain infections.

**EFFECTIVE DATE:** June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:**

American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed NADA 140-867, providing for combining separately approved salinomycin, chlortetracycline, and roxarsone Type A medicated articles to make Type C feeds for broilers. The Type C medicated feeds contain salinomycin sodium 40 to 60 grams per ton, chlortetracycline 500 grams per ton, and roxarsone 45 grams per ton. The Type C medicated feeds are indicated for use for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some

field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment. The NADA is approved and the regulations are amended in 21 CFR 558.128, 558.530, and 558.550. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended to read as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by redesignating paragraphs (c)(5) (vii) and (viii) as paragraphs (c)(5) (vi) and (vii), respectively, and by adding new paragraph (c)(5)(viii) to read as follows:

**§ 558.128 Chlortetracycline.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(viii) Roxarsone and salinomycin in accordance with § 558.550.

\* \* \* \* \*

3. Section 558.530 is amended by adding new paragraph (d)(4)(vii) to read as follows:

**§ 558.530 Roxarsone.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(vii) Roxarsone may be used in combination with salinomycin and chlortetracycline as in § 558.550.

4. Section 558.550 is amended by adding new paragraph (b)(1)(xv) to read as follows:

**§ 558.550 Salinomycin.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(xv)(a) *Amount per ton.* Salinomycin 40 to 60 grams, chlortetracycline 500 grams, and roxarsone 45 grams.

(b) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment.

(c) *Limitations.* Do not feed to layers. In feeds containing 0.8 percent dietary calcium, not to be fed for more than 5 days. Not approved for use with pellet binders. Withdraw 5 days before slaughter. May be fatal if accidentally fed to adult turkeys or to horses. Chlortetracycline as provided by No. 010042 and roxarsone as provided by No. 017210 in § 510.600(c) of this chapter.

\* \* \* \* \*

Dated: June 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-13831 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 100**

[CGD 09-89-01]

**Special Local Regulations; Great International Duck Race, Black Rock Canal, Buffalo, NY**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special local regulations are being adopted for the Great International Duck Race. This event will be held on the Black Rock Canal on 2 July 1989 from 1:00 p.m. to 4:30 p.m. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

**EFFECTIVE DATES:** These regulations are effective from 1:00 p.m. (local time) to 4:30 p.m. on 2 July 1989.



**FOR FURTHER INFORMATION CONTACT:**

MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

**SUPPLEMENTARY INFORMATION:** On 7 April 1989 the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (54 FR 14099). Interested persons were requested to submit comments and no comments were received.

**Drafting Information**

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Great International Duck Race will be conducted on the Black Rock Canal, in front of La Salle Park, on 2 July 1989. This event will have an estimated 30,000 rubber ducks "racing" to a finish line which will be established, within the regulated area, by the event sponsor. Shortly after the duck race there will be a boat parade within the same regulated area. Due to the nature of this event, and the threat vessel traffic would pose, a section of the Black Rock Canal will be closed. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Buffalo, NY).

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

**List of Subject in 33 CFR Part 100**

Marine safety, Navigation (water).

**Final Regulations**

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0901 to read as follows:

**§ 100.35-0901 Great International Duck Race, Black Rock Canal, Buffalo, NY.**

(a) *Regulated Area:* That portion of the Black Rock Canal, from the southern entrance, up to and including the south wall at the entrance of the Buffalo Yacht Club.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 1:00 p.m. (local time) until 4:30 p.m. on 2 July 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger the participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) These regulations will be effective from 1:00 p.m. (local time) to 4:30 p.m. on 2 July 1989.

Dated: May 25, 1989.

D.H. Ramsden,

Capt, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-13816 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 100**

[CGD8-89-09]

**Special Local Regulations; Popeye's Cajun Grand Prix, Lake Pontchartrain, LA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special local regulations are being adopted for the Popeye's Cajun Grand Prix. This event will be held on June 10, 1989 from 12:00 p.m. until 3:00 p.m. at Lake Pontchartrain, LA. In case of postponement this event will be held on June 11, 1989 from 12:00 p.m. until 3:00 p.m. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES: Effective Dates:** These regulations become effective on 10 June 1989 at 11:00 a.m. and terminate on 10 June 1989 at 3:00 p.m. In case of postponement due to inclement weather this regulation will take effect on 11 June 1989 at 11:00 a.m. and terminate on 11 June 1989 at 3:00 p.m.

**Comments:** Comments must be received by July 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** QMCS J.C. Keith, Assistant Operations Officer, U.S. Coast Guard Group New Orleans, LA. Tel: (504) 942-3070.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until 16 May 1989 and there was not sufficient time remaining



to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commentators should include their name and address, identify this notice (CGD8-89-09) and the specific section of the proposal to which the comments apply, and give reasons for comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

#### Drafting Information

The drafter of this regulation is LT Michael F. Leonard, Project Officer, Coast Guard Group New Orleans, LA, and LT J.A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

#### Discussion of Regulation

The marine event requiring this regulation is called "The Popeye's Cajun Grand Prix." This event is sponsored by the Southern Offshore Racing Association. It will consist of approximately 50-70 race boats traveling in excess of 90 MPH. The course followed by the race will be marked by buoys positioned at various points along its several straightaways and turns. The regulated area will encompass the entire race area.

Approximately 1,000 spectator boats are expected for the event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within designated spectator areas. These areas will be defined by buoys and are located as follows:

**West Spectator Area:** Along the west side of the regulated area between 17th Street Canal and the Causeway.

**South Spectator Area:** Along the sea wall on the south part of the regulated area at the mouth of Bayou St. John.

**East Spectator Area:** Along the south side of the regulated area between Pontchartrain Beach and New Orleans Lakefront Airport.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

#### PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-8-89-09 is added to read as follows:

§ 100.35-8-89-09 Lake Pontchartrain, Louisiana.

(a) *Regulated Area.* The following area will be closed to all vessel traffic: A triangle starting at a point 1.7 statute miles east of the Causeway on the South shore of Lake Pontchartrain near the West End Boat Launch (latitude 30-01.8N, longitude 090-07.0W) along the south shore to a point 1.1 statute miles east of the Lake Front Airport (latitude 30-02.8N, longitude 090.00.1W) then northwesterly 13.2 statute miles to the Bascule Bridges on the Causeway (latitude 30-15.0N, longitude 090-06.6W).

(b) *Special Local Regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF-FM Channel 16, when required, by the call sign "PATCOM".

(c) *Effective Dates.* These regulations will be effective from 11:00 a.m. to 3:00 p.m., 10 June 1989. In case of postponement due to inclement weather this regulation will take effect on day 11 June 1989 at 11:00 a.m. and terminate at 3:00 p.m. on 11 June 1989.

Dated: June 2, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-13817 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[FRL-3599-1]

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Oklahoma; Plan for Controlling Total Reduced Sulfur From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** In Response to Section 111(d) of the Clean Air Act, the State of Oklahoma has submitted its plan for controlling total reduced sulfur emissions from the only existing kraft pulp mill in the State. EPA now approves that plan.

**EFFECTIVE DATE:** This approval will be effective August 11, 1989 unless EPA receives notice within 30 days that adverse or critical comments will be submitted. If the Agency receives such notice, it will propose approval of the plan in a future Federal Register to allow public comment.

**ADDRESSES:** Written comments (or notice of intent to submit adverse or critical comments) should be addressed to Mr. Thomas Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Documents relevant to this action are available for public inspection during normal business hours at the same address and at the offices of the Oklahoma State Department of Health, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73152 and the Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC 20460. Anyone wishing to examine those documents should make an appointment with the appropriate office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregg Guthrie, SIP/NSR Section (6T-AN), Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733; Telephone (214) 655-7214 or FTS 255-7214. Reference File SIP 1-4-2-17-2.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 111 of the Clean Air Act, EPA promulgates standards of performance for new stationary sources of air pollution. After promulgating such a new source performance standard (NSPS), EPA publishes an emission control guideline document and announces its availability in the Federal



**Register.** Section 111(d) of the Act and implementing regulations at 40 CFR Part 60, Subpart B require that each state adopt a plan for controlling designated pollutants from existing facilities and submit it to EPA for approval. Today, EPA is approving a 111(d) plan submitted by the State of Oklahoma.

#### The TRS NSPS

Total Reduced Sulfur (TRS) consists of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, all of which are commonly emitted by kraft pulp mills. Although these TRS emissions have no demonstrated adverse effects on human health at low concentrations, they can corrode or tarnish exposed copper, zinc, and silver and discolor paints containing heavy metal salts, e.g., lead. More importantly, perhaps, TRS emissions have a distinctly unpleasant odor which may adversely affect property values and economic development in the vicinity of kraft pulp mills.

On February 23, 1978, EPA promulgated new source performance standards for kraft pulp mills at 43 FR 7568. In relevant part, the NSPS designated TRS as a welfare related pollutant to be controlled. Subsequently, in March 1979, the Agency's Office of Air Quality Planning and Standards issued "Kraft Pulp, Control of TRS Emissions from Existing Mills," a emission control guideline document for use by state governments developing controlling regulations. On May 20, 1986, EPA amended the NSPS at 51 FR 18538 to allow a higher level of TRS emissions from smelt dissolving tanks.

#### Oklahoma's Adoption of a 111(d) Plan

After public hearings, the Oklahoma State Board of Health adopted Oklahoma Air Pollution Control Regulation (OAPCR) 3.4(b)(4)(A) on November 15, 1983, imposing TRS emission limits on the State's only existing kraft pulp mill and requiring it to either comply with the new limits within two years or submit an alternate compliance schedule within six months for review and approval of the Oklahoma Air Quality Council (Council). The facility subject to the amended regulation is a kraft pulp mill owned and operated by Weyerhaeuser Paper Company (Weyerhaeuser) in Valliant, Oklahoma. In October 1983, Weyerhaeuser submitted a compliance schedule for its Valliant facility, committing to achieve compliance with the new TRS emission limit by May 9, 1989. After a hearing, the Council approved Weyerhaeuser's plan via verbal order duly recorded in its

minutes on November 15, 1983. Later, on January 20, 1987, the Council amended OAPCR 3.4(b)(4)(A)(i)(c), changing the TRS emission limit for smelt dissolving tanks from 0.0084 to 0.016 grams per kilogram of black liquor solids, rendering it consistent with the NSPS revision EPA promulgated on May 20, 1986.

On November 17, 1987, the Governor of Oklahoma submitted OAPCR 3.4(b)(4) and the State's administrative record on Weyerhaeuser's compliance schedule to EPA Region VI for review and approval as a revision to 40 CFR Part 62. After reviewing that submission, EPA noted that Weyerhaeuser's compliance schedule lacked incremental compliance dates required by 40 CFR 60.24(e)(1), was ambiguous with regard to the compliance test method required by 40 CFR 60.24(b)(2),<sup>1</sup> and would be difficult, if not impossible, to incorporate by reference in 40 CFR Part 62 because the Council did not reduce its approving order to written form.<sup>2</sup>

After EPA informed the State of its concerns, the Council issued a written consent order to Weyerhaeuser on May 3, 1988, incorporating an incremental compliance schedule and affirming EPA Method 16 or 16A from Appendix A to 40 CFR Part 60 as the required compliance test method. On June 1, 1988, the State submitted a copy of that order to EPA Region VI, thus resolving EPA's objections to approval of its 111(d) plan.

#### Relative Stringency of Emission Limits

As amended, OAPCR 3.4(b)(4)(A)(i) imposes the following TRS emission limits on Weyerhaeuser's Valliant kraft pulp mill:

(a) Forty (40) parts per million (ppm) of total reduced sulfur measured as hydrogen sulfide on a dry basis and on a 12 hour average, converted to eight (8)

volume percent oxygen from any recovery furnace.

(b) Forty (40) parts per million of total reduced sulfur measured as hydrogen sulfide on a dry basis and on a 12-hour average, corrected to ten (10) volume percent oxygen from any lime kiln.

(c) 0.016 gram of total reduced sulfur measured as hydrogen sulfide per kilogram of black liquor solids for a 12-hour average from any smelt dissolving tank.

(d) Non-condensable gases from all evaporators and digesters shall be efficiently incinerated or otherwise treated to limit emissions to less than five (5) ppm by volume on a dry basis.

Although the limits imposed by subsections (c) and (d) of this regulation are identical to those recommended by EPA, "the 40 ppm emission limits of subsections (a) and (b) are less stringent than the 20 ppm limits recommended by the Agency's guidance document. Because TRS is a welfare related pollutant, 40 CFR 60.24(d) allows states flexibility in balancing EPA guideline recommendations against other factors of public concern, e.g., the effect of compliance costs on local economies, in developing their 111(d) plans. In this case, purchasing and installing control equipment to comply with the 20 ppm limits EPA recommended would, according to information submitted to the State by Weyerhaeuser, have incremental costs in excess of \$4 million. Because Weyerhaeuser's kraft pulp mill is Valliant's largest industry and must compete with kraft pulp mills (subject to similar 40 ppm limits) in nearby Arkansas, the Council believed this an excessive cost for incremental odor reduction. EPA has no quarrel with that decision.

The compliance schedule Oklahoma approved requires Weyerhaeuser to comply with the limitations of OAPCR 3.4(b) by May 9, 1989. This is the maximum approvable time for compliance under EPA's guideline document and was no doubt adopted in view of the same factors influencing the Council's emission limits decision.

#### EPA Action

Because EPA considers Oklahoma's 111(d) plan for TRS noncontroversial, it is now publishing a "direct final" approval, i.e., approving it without providing prior opportunity for public comment. In the absence of further developments, EPA's approval will be effective 60 days from today. If EPA receives notice within 30 days that someone desires to submit adverse or critical comments, however, it will withdraw the approval and publish a

<sup>1</sup> OAPCR 3.4(b)(4)(A)(ii) requires compliance testing "following the Oklahoma test procedure requirements." Such test procedures are found in an Appendix to OAPCR 5.1. EPA has not approved that Appendix and it is not part of Oklahoma's SIP.

<sup>2</sup> Pursuant to the Oklahoma Administrative Procedure Act, 75 O.S. 1963, § 312, only administrative orders "adverse to a party in an individual proceeding" (Weyerhaeuser in this case) need be reduced to writing. Moreover, § 1-1802(l) of the Oklahoma Clean Air Act requires that the State issue an administrative order to a violating source and provide opportunity for hearing thereon prior to enforcement of an emission limitation, including those imposed by prior order. In view of these statutory provisions, Oklahoma has sometimes reserved its resources for issuing written administrative orders to situations involving sources already in violation of a verbal compliance order. EPA and the State have discussed the problems this procedure posed for State/Federal coordination and the State has begun issuing written orders in source specific matters, formatted to facilitate federal review and approval.



notice of proposed approval and request for public comment in the Federal Register.

Pursuant to 5 U.S.C. 605(b), I certify that approval of Oklahoma's 111(d) plan will not have a significant economic impact on a substantial number of small entities. Weyerhaeuser Paper Company is not a small entity and is moreover already subject to the plan by virtue of State action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12292.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

#### List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric oxides.

Date: June 1, 1989.

William K. Reilly,  
Administrator.

40 CFR Part 62, Subpart LL is amended as follows:

#### PART 62—[AMENDED]

##### Subpart LL—Oklahoma

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 62.9100 is amended by adding paragraphs (b)(2), (c)(2), and an

undesignated center heading preceding § 62.9140 to read as follows:

#### § 62.9100 Identification of plan.

\* \* \*

(b) \* \* \*

(2) Control of total reduced sulfur from existing kraft pulp mills was submitted on November 17, 1987, and supplemented on June 1, 1988.

(c) \* \* \*

(2) Kraft pulp mills.

#### Total Reduced Sulfur From Existing Kraft Pulp Mills

3. Section 62.9140 is added to read as follows:

#### § 62.9140 Identification of source.

The plan includes the following kraft pulp mill:

(a) Weyerhaeuser Paper Company in Valliant, Oklahoma.

[FR Doc. 89-13478 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 1, 21, 22, 74, and 94

[General Docket 82-243]

#### Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The *Second Report and Order* concerning Government and non-Government fixed service usage of the frequency bands 932-935 MHz and 941-944 MHz contained an incorrect effective date of April 1, 1989, and errors in paragraphs 20, 21, 23, 30, 33, 37, and 38 relating to §§ 21.101, 21.107, 21.701,

22.501, 74.502, 94.65, and 94.67, respectively, of the FCC Rules. This document corrects the effective date to April 12, 1989, deletes a frequency range in § 21.101, corrects tables in §§ 21.107 and 21.701, corrects introductory language to a table in § 22.501, clarifies that a paragraph has been added to, and corrects a typographical error in, § 74.502, clarifies that table numbers have been redesignated in § 94.65, and corrects a table in § 94.67.

EFFECTIVE DATE: June 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653-8116.

SUPPLEMENTARY INFORMATION: See *Second Report and Order*, 54 FR 10326, March 13, 1989.

#### Rules Corrections

In FR Doc. 89-5124, published in the Monday, March 13, 1989, Federal Register the following corrections are made:

1. On page 10326, the Effective Date caption is revised to read: "Effective Date: April 12, 1989."

#### § 21.101 [Corrected]

2. On page 10327, the amendatory language of paragraph 20 is corrected to read: "In § 21.101, the table in paragraph (a) is amended by removing the frequency range 512 to 1,000 MHz, and by adding the following frequency ranges in numeric order:"

3. On page 10328, the amendatory language and table of paragraph 21 is corrected to read: "In § 21.107, the table in paragraph (b) is amended by adding the following frequency ranges in numeric order:"

#### 21.107 Transmitter power.

\* \* \*

(b) \* \* \*

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed(W)	Mobile(W)	Fixed (dBW)	Mobile (dBW)
932.5 to 935 .....	20.0	.....	+40	.....
941.5 to 944 .....	20.0	.....	+40	.....

#### § 21.701 [Corrected]

4. On page 10328, in paragraph 23, the table in § 21.701(c)(1) is corrected by changing the second entry in the eighth row from "941.8375" to "943.8375".

#### § 22.501 [Corrected]

5. On page 10329, in paragraph 30, the text of § 22.501(g)(1) is corrected by

revising the third sentence to read: "The 928/959 MHz frequencies may be used in paired or unpaired configurations; the 932/941 MHz frequencies are primarily intended for two-way use, but requests to utilize half of a channel pair to satisfy a single channel requirement will be considered upon a showing that spectrum efficiency will not be impaired,

and that unpaired spectrum is not available in other bands."

#### § 74.502 [Corrected]

6. On page 10329, the amendatory language of paragraph 33 is corrected to read: "In § 74.502, paragraphs (a) through (d) are redesignated as paragraphs (b) through (e), and a new



paragraph (a) is added to read as follows. In newly redesignated paragraph (e), change the internal reference to read 'paragraph (b) of this section'."

7. On page 10329, in paragraph 33, the text of § 74.502(a) is corrected by revising the fifth word from "W.S.C." to "US" in the first sentence.

#### § 94.65 [Corrected]

8. On page 10330, the amendatory language of paragraph 37 is corrected to read: "Section 94.65 is amended by redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v); adding a new paragraph (a)(1)(iv); redesignating paragraphs (a)(2)(i) through (a)(2)(iii) and Tables 7 through 9 as paragraphs (a)(2)(ii) through (a)(2)(iv) and Tables 9 through 11; adding a new paragraph (a)(2)(i); and adding additional frequency bands in new paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) in numeric order to read as follows:"

9. On page 10330, the amendatory language and table of paragraph 38 is corrected to read: "In § 94.67, the table is amended by adding the following frequency ranges in numeric order to read as follows:"

#### § 94.67 Frequency tolerance.

Frequency band (MHz)	Tolerance as percentage of assigned frequency
932-932.5, 941-941.5	0.00015
932.5-935, 941.5-944	0.00025

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13746 Filed 6-9-89; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

#### 50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA has increased the quota for chinook salmon in the

commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, beginning June 5, 1989, from 15,000 to 17,700 fish. The 2,700 fish increase is the number of fish that remained unharvested in the chinook salmon quota for the commercial fishery from Sisters Rocks to House Rock, Oregon, when that fishery closed on May 2, 1989. This action is necessary to conform with the preseason announcement of 1989 ocean salmon management measures. It is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season. NOAA also has modified a boundary restricting deliveries of mixed loads of chinook and coho salmon or coho salmon-only loads in the commercial fishery from Cascade Head to Orford Reef Red Buoy, Oregon, which opens on July 1, 1989. The modification is necessary so that trollers may deliver their catch to Port Orford, Oregon, approximately one mile south of the management area. It is intended to accommodate fishermen's needs without substantially or adversely affecting the implementation of the 1989 ocean salmon management measures.

DATES: Effective Date: June 5, 1989.

Comments will be accepted until June 21, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415.

Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

#### FOR FURTHER INFORMATION CONTACT:

William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

#### SUPPLEMENTARY INFORMATION:

The preseason notice of 1989 ocean salmon management measures (May 8, 1989, 54 FR 19798) announced that the ocean commercial fisheries from Humbug Mountain, Oregon, to Punta Gorda, California, would be managed not to exceed an overall quota of 30,000 chinook salmon through August 31. This overall quota is partitioned into three subquotas and seasons. Any overages or underages in meeting a subquota for one time period will be subtracted from or added to the next troll fishery prior to August 31.

The commercial fishery in the subarea between Sisters Rocks and House Rock, Oregon, closed on May 2, 1989, when it

was projected that the 7,500 chinook subquota would be reached (54 FR 19904, May 9, 1989). Actual landings through June 1, 1989, totaled approximately 4,800 chinook salmon in the subarea, a harvest of 2,700 fish under the subquota.

The next troll fishery begins on June 5, 1989, for the entire area between Humbug Mountain, Oregon, and Punta Gorda, California. Therefore, the subquota for this fishery should be increased by the number of chinook salmon not harvested in the May fishery from Sisters Rocks to House Rock. Accordingly, this notice increases the subquota for the commercial fishery from Humbug Mountain to Punta Gorda beginning on June 5, 1989, from 15,000 to 17,700 chinook salmon.

The preseason notice of 1989 management measures also announced that mixed loads of chinook and coho and coho-only loads that are caught in the commercial fishery from Cascade Head to Orford Reef Red Buoy, Oregon, must be delivered in that management area. This requirement is in effect from July 1 through the earliest of August 31 or attainment of the coho quota or coho ceiling. The Oregon Department of Fish and Wildlife has recommended that this restriction be modified to allow salmon caught in the management area to be landed in Port Orford, Oregon, approximately one mile south of the management area boundary. Trollers would like to be able to land their catch in Port Orford, Oregon, which is in the closed area between Orford Reef Red Buoy and Humbug Mountain, Oregon.

This modification of the management boundary would not substantially or adversely affect the implementation of the 1989 management measures since all salmon landed would count toward the overall catch quota and subarea catch ceiling for coho salmon. Enforcement problems are expected to be minimal. Therefore, the preseason notice of 1989 management measures (54 FR 19798, May 8, 1989) is modified as follows. In Table 1 on page 19803, for the area Cascade Head to Orford Reef Red Buoy and the season July 1 through earliest of August 31 or coho quota or coho ceiling, the paragraph in the column "Restrictions and exceptions" is revised to read as follows:

Cape Arago to Orford Reef Red Buoy is closed July 14-31 and August 18-31. Three-day closure at 75% of coho ceiling (C-7). A single daily landing limit per vessel of 50 coho is permitted. There is no limit on the number of chinook that may be landed. To land more than 50 coho, chinook must also be landed such that there is at least 1 chinook for each 3 coho landed over 50. Mixed loads



of chinook and coho or coho-only loads must be delivered between Cascade Head and Port Orford, Oregon. All chinook in possession must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook and coho salmon possessed or landed between Cascade Head and Port Orford may not be returned or transferred to any vessels except vessels licensed to buy salmon.

This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and

the California Department of Fish and Game regarding this action. The States of Oregon and California will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 21, 1989.

#### Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

#### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 6, 1989.

David S. Crestin,

Acting Director of Office Fisheries,  
Conservation and Management, National  
Marine Fisheries Service.

[FR Doc. 89-13806 Filed 6-6-89; 4:24 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 163

[Docket No. 86P-0297/CP]

#### Cacao Products; Proposal To Amend the Standard of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is further extending the period for submitting comments on the proposal to amend the standards of identity for certain cacao products. This action is based upon a request from the International Ice Cream Association (IICA).

DATE: Comments by August 11, 1989.

**ADDRESS:** Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Arthur R. Johnson, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-414), 200 C Street, SW., Washington, DC 20204, 202-485-0112.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of January 25, 1989 (54 FR 3615), FDA published a proposal to amend the standards of identity for cacao products in 21 CFR Part 163 and requested comments by March 27, 1989. Based upon requests from the American Dairy Products Institute and the Chocolate Manufacturers Association, the comment period was reopened and

extended 60 days, to June 12, 1989, in order to allow time for a full evaluation of the proposed amendments. The notice of extension was published in the Federal Register of April 12, 1989 (54 FR 14663).

In a letter dated May 18, 1989, IICA, which represents over 200 manufacturers of ice cream and frozen dessert products, requested an additional 60-day extension to the comment period ending June 12, 1989. IICA stated that an extension was necessary to give IICA adequate time to canvass its large membership and to determine the consequences of the proposal to the members, to permit a review by an internal IICA committee, and to formulate meaningful comments. IICA further stated that the committee is scheduled to meet in mid-June and that it is not feasible to advance the date of that meeting. IICA also stated its belief that an extension is justified because it is in the best interest of the affected industries and consumers to allow sufficient time for a full evaluation of the proposed amendment and for the development of a complete response by interested parties.

FDA concludes that IICA has provided adequate grounds in support of extending the time period for comment. Therefore, FDA is extending the comment period for an additional 60 days to August 11, 1989.

Interested persons may, on or before August 11, 1989, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 6, 1989.

Richard J. Ronk,  
Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13829 Filed 6-7-89; 10:57 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration National Highway Traffic Safety Administration

#### 23 CFR Part 655

[FHWA Docket No. 89-18]

#### Uniform System for Handicapped Parking

**AGENCY:** Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of intent to form advisory committee for regulatory negotiation.

**SUMMARY:** The FHWA and NHTSA are considering the establishment of an advisory committee to develop a report which includes a recommended rulemaking proposal concerning a uniform system for handicapped parking. The committee would develop its recommendation using a negotiation process. The committee would be comprised of persons who represent the interests affected by handicapped parking regulations.

**DATE:** Comments and suggestions must be received on or before June 27, 1989.

**ADDRESS:** Comments and suggestions concerning the membership of the advisory committee, the issues that it should consider, the interests affected, the procedures that should be followed and any other matters relating to such a committee may be mailed in duplicate to: Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vincent J. Nowakowski, Federal Highway Administration, Office of Traffic Operations (202) 366-2146, or Mr. E. William Fox, National Highway Traffic Safety Administration, Office of Chief Counsel, (202) 366-1834, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.



**SUPPLEMENTARY INFORMATION:** Congress addressed the issue of parking for handicapped persons in Section 231 of the Department of Transportation Appropriations Act of 1984 (Pub. L. 98-78) enacted August 15, 1983. This section included statements of congressional findings regarding the needs of handicapped people and encouraged the States to adopt laws for special parking privileges. In addition Congress:

- Encouraged the use of the International Symbol of Access on either specialized licensed plates or a placard to identify vehicles carrying handicapped persons.

- Stated the need for reciprocity agreements among the States so the privileges would be available to the handicapped as they traveled throughout the country.

In response to that statute, the Secretary of Transportation wrote to the governor of each State on December 13, 1983, encouraging the adoption of the International Symbol of Access and agreement of reciprocity among the States for handicapped parking privileges.

Testimony before the Senate Committee on Commerce, Science, and Transportation in the spring of 1987, indicated mixed results regarding the adoption of the International Symbol of Access and reciprocity sought in Pub. L. 98-78. Some States made strides towards uniform model regulations for handicapped parking, but others failed to do so.

Congress next addressed the issue of parking for handicapped persons in Section 262 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17) enacted April 2, 1987. This section required the Secretary of Transportation to conduct a study on parking for handicapped persons. The report was to address two areas:

- Problems encountered by handicapped persons in parking motor vehicles, and

- Whether or not each State should establish parking privileges for handicapped persons and grant to nonresidents of the State the same parking privileges granted to residents.

The report, *Parking for Handicapped Persons Study*, was delivered to Congress in November 1987. It found several inconsistencies among the States that caused problems for handicapped persons parking motor vehicles. These inconsistencies were:

- Lack of a uniform definition of who is entitled to special handicapped parking privileges.

- Lack of a uniform method for identifying motor vehicles owned by or transporting a handicapped person.

- Lack of uniform parking privileges extended to handicapped persons,

- Varying degrees of enforcement of handicapped parking laws and severity of penalties imposed on violators, and

- Lack of reciprocity between States in recognizing out-of-State handicapped parking permits, license plates, etc.

The report stated that if the States could agree on a definition of a handicapped person, on using the International Symbol of Access on Handicapped plates and placards, on establishing parking privileges, and recognizing out-of-State handicapped plates and placards, the parking problems facing the handicapped traveler would be greatly reduced. The report also noted that the issue of uniform handicapped parking regulations has been addressed by the National Committee on Uniform Traffic Laws and Ordinances in its Uniform Vehicle Code (UVC). The UVC is a model set of vehicle laws based on experience under various State laws throughout the Nation.

The *Parking for Handicapped Persons Study* recommended the States to adopt sections 1-121.1, 11-1005, and 11-1003(a)1.k. of the UVC. Adoption of these sections would:

- Standardize the definition of a handicapped person,

- Ensure the right of any handicapped person, whether driver or passenger, to legally park in any designated handicapped parking space in any State,

- Require the use of the International Symbol of Access as the means of identifying handicapped parking spaces and vehicles carrying handicapped persons,

- Require the International Symbol of Access be displayed on license plates or placards issued to handicapped individuals, and

- Require that the placement of an identification card be such that it is easily visible through the front windshield of any vehicle.

In late March 1988, the Secretary of Transportation transmitted copies of the report to the governors of all States.

The report cited problems facing handicapped persons and recommended the States adopt these sections of the UVC. Most States have not adopted all the recommended sections of the UVC. Thus, Congress passed Pub. L. 100-641 which requires DOT to issue regulations for a uniform system for handicapped parking and which is the subject of this notice.

The legislative history of Pub. L. 100-641 clearly contemplates regulatory

negotiation in the processing of this rulemaking. Regulatory Negotiation (RN), is a procedure recommended by the Administrative Conference of the United States (Recommendation 82-4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982) for handling certain regulatory actions. To ensure its legality, RN would be carried out by an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C. app. 1. The purpose of RN is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest. The recommendation by the committee should be a proposal which reflects appropriate rulemaking objectives. The FHWA/NHTSA would take part in the discussions. While the FHWA/NHTSA is hopeful that RN will result in the issuance of an NPRM that would be acceptable to most parties, the FHWA/NHTSA is committed to developing a practical regulation.

If the RN process fails, the agency would issue a new NPRM based upon the complete regulatory record including the record of this process.

#### Regulatory Negotiation

The increasing complexity of some Government regulations, compounded by what some see as an increased formalization of the written rulemaking process, can make it difficult for an agency to develop a sound regulatory solution to some problems. The standard process often leads to participants developing adversarial relationships with each other. In this more formal structure, they may take extreme positions, withhold information from one another, or attack the legitimacy of opposing positions. The give and take sometimes necessary to develop a workable solution is not always possible through the comment and reply process. Public comments are often focused on finding problems with the proposals of others rather than helping to develop creative solutions.

With these problems in mind, participants often tell the agency that a better rule could be developed if we could all just sit around a table and work it out. Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule



that is acceptable to the respective interests, all within the contours of the substantive statute.

As a result of research on this problem, the Administrative Conference adopted Recommendation 82-4. The Administrative Conference's recommendation is essentially that agencies consider assembling a group of representatives of all affected interests who would be encouraged to reach consensus on a resolution of the issues and to draft, for the agency head's consideration, the text of a proposed regulation. Recognizing the experimental nature of this approach, we agree that the RN process may be useful in this particular case. We have set forth below a set of suggested procedures that we believe will provide a mechanism by which the benefits of negotiation can be achieved. We also believe that the procedures provide the appropriate safeguards suggested by the Administrative Conference, to ensure that affected interests have the opportunity to participate, that the resulting rule is within the discretion delegated by Congress, and that it is not arbitrary or capricious.

#### Procedures and Guidelines

The following proposed procedures and guidelines would apply to this process, subject to appropriate changes made as a result of comments received on this notice or as are determined to be necessary during the negotiating process. It should be noted that several necessary preliminary steps have already been taken.

1. *Convenor/Mediator/Facilitator.* The convenor/mediator/facilitator will chair the actual negotiations, participate in the "negotiations," and be expected to offer alternative suggestions toward the desired consensus. He/she may also ask the parties to present additional material or to reconsider their positions.

2. *Feasibility:* The FHWA/NHTSA have examined the issues and interests involved and have made a preliminary inquiry among representatives of the identified interests to determine whether it is possible to reach agreement on: (a) Individuals to represent those interests, (b) the preliminary scope of the issues to be addressed, and (c) a schedule for developing a notice of proposed rulemaking. The issues and interests are listed in subsequent sections of this document. On the basis of the preliminary inquiry, the FHWA/NHTSA believe that regulatory negotiation could be successful with respect to the development of a uniform system for handicapped parking and that the potential participants listed below could

adequately represent the affected interests.

3. *Participants:* There will be approximately 15 participants in the negotiating group. A number larger than this could make it difficult to have effective negotiations. One purpose of the present notice is to assist the identified interests to determine whether other interests, who would not be adequately represented by the proposed participants, may be substantially affected by the proposed rule to be developed. However, we do not believe that each potentially affected individual or organization must have its own representative. Rather, each interest should be adequately represented by the selected parties. To ensure a balanced group, we will make every effort to ensure that no one interest has more than a third of the members of the negotiating committee.

4. *Good Faith:* Participants must be willing to negotiate in good faith. In this regard, it is important that senior individuals within each organization be designated to represent that organization. No individual is required to "bind" the interests he or she represents, but the individual should be at a high enough level within his/her organization to personally commit their organization on most matters. The FHWA/NHTSA plan is to issue the negotiated proposal in a notice of proposed rulemaking unless it is inconsistent with the statutory authority of the agency or other statutory requirements, or it is not appropriately justified. It is expected that, during the negotiating process, the participants will communicate to their respective organizations the progress of the negotiations. For the process to be successful, the interests represented should be willing to accept the final product of the advisory committee.

5. *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of the Federal Advisory Committee Act, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining advice or recommendations unless that group is chartered as a Federal advisory committee in accordance with the requirements of the statute. It is the purpose of this notice to indicate our intent to create a Federal advisory committee as well as to:

- a. Identify the issues we believe are involved in the rulemaking,
- b. Identify the interests we believe are affected by those issues,
- c. Identify the participants we have initially determined will adequately

represent those interests in the negotiations, and

d. Ask for comment on the use of regulatory negotiation for this rulemaking and on whether the issues, parties, procedures, and guidelines are adequate and appropriate.

6. *Requests for Representation:* If, in response to this notice, an additional person or interest requests membership or representation in the negotiating group, the agency would determine (i) whether that interest would be substantially affected by the rule, (ii) if so, whether it would be adequately represented by an individual already in the negotiating group, and (iii) whether, in any event, the requester should be added to the group or whether interests can be consolidated and still provide adequate representation.

7. *Final Notice:* After evaluating comments and requests for representation received as a result of this notice, the FHWA/NHTSA would issue a final notice announcing the establishment of the Federal advisory committee. After the Federal advisory committee notice is published in the *Federal Register*, the negotiation process would begin.

8. *Administrative Support and Meetings:* Staff support would be supplied by the FHWA/NHTSA. Meetings would be held in the Washington, DC, area.

9. *Consensus:* The goal of the negotiating process is consensus. Generally, consensus means that each interest should concur in the result.

10. *Record of Meetings:* In accordance with the requirements of the Federal Advisory Committee Act, the FHWA/NHTSA would keep a record of all meetings of the advisory committee. This record would be placed in the public docket for this rulemaking. Meetings of the committee would be open to the public, subject to space availability, and would be announced in the *Federal Register* before being held.

11. *Committee Procedures:* Subject to any applicable legal requirements, the committee would establish the detailed procedures for committee meetings that it deemed most appropriate.

12. *Notice of Proposed Rulemaking:* The objective of the committee is to prepare a report containing a notice of proposed rulemaking (NPRM) and preamble. The FHWA/NHTSA would provide drafting assistance to the committee. The report should also describe the factual material on which the group relied. If consensus is not obtained on some issues, the report should identify the areas of agreement, the areas in which consensus could not



be reached, and the reasons for nonagreement. It is expected that, to the extent possible, the participants would address economic and regulatory flexibility requirements.

13. *Agency Action on NPRM:* The FHWA/NHTSA would issue the proposed rule as prepared by the committee unless the agency finds that it is inconsistent with the statutory authority of the agency or other statutory requirements or it is not appropriately justified. In that event, the agency would explain its reasons for its decision. If the agency wishes to modify the negotiated proposal, it would do so in a way that allows the public to distinguish its modifications from what the group proposed.

14. *Final Rule:* After the comments have been received on any notice of proposed rulemaking, the advisory committee would review the comments to determine whether its original recommendations to the agency should be modified. Any necessary changes would be negotiated by the committee in the same manner as the NPRM. The committee would prepare a final report, including a preamble responding to public comment and a proposed final rule. The final rule is the sole responsibility of the Administrators of the FHWA and NHTSA. It must be stressed that the Administrators want to use the regulatory negotiation process and intend to use any negotiated rule on which there is a committee consensus, if it is practicable and legally proper to do so.

#### Major Issues That Would Be Considered in RN on a Uniform System for Handicapped Parking

The FHWA/NHTSA have identified what it believes to be the major issues to be considered in RN. They are listed below. Persons who desire to suggest additional issues that should be considered during RN may do so by submitting comments and suggestions in the manner described under the paragraph entitled "ADDRESS." Other regulatory issues would be considered by the committee as they arise.

1. Recognition of the International Symbol of Access (ISA). Adopt the ISA (as adopted by the Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk.

2. Issuance of Handicapped License Plates Displaying the ISA. Provide for the issuance of license plates displaying the ISA for vehicles which will be used to transport individuals with handicaps

which limit or impair the ability to walk, under criteria determined by the State.

3. Issuance of Removable Windshield Placards. Provide for the issuance of removable windshield placards to be displayed inside the vehicle on the passenger side of the vehicle dashboard (displaying the ISA) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State.

4. Fees for Licensing and Registering Vehicles Transporting Handicapped Persons. Provide that fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State.

5. Reciprocity. Recognize licenses and placards identifying handicapped persons and displaying the ISA which have been issued by other States and countries.

#### Interests Involved in the Establishment of a Handicapped Parking System

The following interests should be represented in negotiations to develop regulations for a uniform system for handicapped parking:

1. Federal Government.
2. Public/Consumer.
  - a. National organizations representing persons with disabilities.
3. State and local government.
  - a. Motor vehicle agencies.
  - b. Law enforcement agencies.

Comments and suggestions on this list of interests should be submitted as explained in the "ADDRESS" paragraph above.

#### Parties That Could be Part of the RN Process

The advisory committee would recommend an NPRM to the FHWA/NHTSA. Therefore, it is important that the advisory committee be comprised of persons who possess substantial expertise or various viewpoints on the various issues which would be presented to it for discussion and preparation of recommendations.

They must also adequately represent their interests and be able to officially represent their organization to the fullest extent possible. The following is a list of possible representatives which the FHWA/NHTSA has tentatively identified.

1. Federal Highway Administration.
2. National Highway Traffic Safety Administration.
3. American Association of Motor Vehicle Administrators.
4. International Association of Chiefs of Police.

5. National Committee on Uniform Traffic Laws and Ordinances.

6. Paralyzed Veterans of America.

7. The Association for Persons with Severe Handicaps.

8. American Automobile Association.

9. Disabled American Veterans.

Comments and suggestions on this tentative list of representatives may be submitted as explained under the paragraph entitled "ADDRESS." Others who believe they should be a party to these proceedings should submit requests to the same location explaining who they represent and how they can represent an interest that would not be adequately represented by the parties listed above.

#### Tentative Schedule

In accordance with the importance the FHWA/NHTSA attaches to the uniform system for handicapped parking rulemaking, the FHWA/NHTSA plan to expedite the processing of any rulemaking. The FHWA/NHTSA believe that the use of RN should facilitate these plans by providing a consensus proposal and by providing for the input of interested persons early in the rulemaking process. The FHWA/NHTSA hope to be able to establish an advisory committee by July 12, 1989. The first meeting of the Advisory Committee is tentatively scheduled for August 21, 1989. The location and time for the meeting will be announced at a later date. In order to eliminate the possibility of disagreement during review of the notice that it required under DOT rulemaking procedures and Executive Order 12291 by the Office of the Secretary (OST) and Office of Management and Budget (OMB), the FHWA/NHTSA have already taken steps to ensure the involvement of OST and OMB during the process. The FHWA/NHTSA would plan to issue the NPRM by November 27, 1989, with a 30-day period for public comment being provided. The development of any final rule would, of course depend on the comments received and their consideration by the advisory committee, but the FHWA/NHTSA would strive to issue a final rule early in 1990.

#### Failure of Advisory Committee To Agree on Recommendations

In the event the advisory committee is unable to reach a consensus on a proposed NPRM for submission to the FHWA/NHTSA, the agency will proceed with prompt development of a NPRM the FHWA/NHTSA deem appropriate.



Because of the importance we attach to developing an NPRM in this matter, and to prevent the possibility that anyone would attempt to use the RN process simply to delay the development of an NPRM, the Administrators have directed that the committee be dissolved if it cannot reach agreement within 45 days after the final pre-NPRM meeting. Earlier dissolution will occur if the convener recommends or the agency believes that it will be impossible to meet the deadline because of a lack of sufficient progress.

Issued on: June 5, 1989.

R.D. Morgan,  
Executive Director.

Jeffrey R. Miller,  
Acting Administrator, NHTSA.  
[FR Doc. 89-13813 Filed 6-9-89; 8:45 am]  
BILLING CODE 4910-22-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 931

#### New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on an Amendment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** New Mexico promulgated rules for its permanent regulatory program (hereinafter, the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The promulgated rules pertain to permit and exploration fees, water control for coal mine waste banks, disposal of non-coal wastes, backfilling and grading, inspection and enforcement, and the training, examination, and certification of blasters. New Mexico's promulgated rules differ from the rules it previously proposed to OSMRE and OSMRE approved. OSMRE is reviewing the promulgated rules to ensure that they are consistent with SMCRA and the Federal regulations.

This notice sets forth the times and locations that the New Mexico promulgated rules are available for public inspection, the comment period during which interested persons may submit written comments on the amendments, and the procedures that

will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t. July 12, 1989. If requested, a public hearing on the amendment will be held on July 7, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on June 27, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the amendments by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director,  
Albuquerque Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 625 Silver Avenue, S.W.,  
Suite 310, Albuquerque, New Mexico  
87102, Telephone: (505) 766-1486.  
Office of Surface Mining Reclamation  
and Enforcement, Administrative  
Record Office, Room 5131, 1100 "L"  
Street, NW, Washington, DC 20240,  
Telephone: (202) 343-5492.  
New Mexico Energy & Minerals  
Department, Mining & Minerals  
Division, 525 Camino de los Marquez,  
Santa Fe, NM 87501, Telephone: (505)  
827-5970.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Robert H. Hagen, Director,  
Albuquerque Field Office, at the address  
or telephone number listed in  
"ADDRESSES."

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, *Federal Register* (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.15, 931.16, and 931.30.

##### II. Proposed Amendment

On March 9 and 17, 1989, OSMRE published notices in the *Federal Register*

(54 FR 9980 and 54 FR 11183; Administrative Record Nos. NM-480 and NM-484) approving the June 17, 1987, (as revised and clarified on

February 18, 1988, and August 10, 1988; Administrative Record Nos. NM-356, NM-393, and NM-438), and April 18, 1988 (as revised and clarified on October 20, 1988; Administrative Record Nos. NM-405 and NM-452) State-proposed amendments to the rules of the New Mexico program. The Director of OSMRE approved the amendments on the condition that New Mexico would adopt the rules in a form identical to that submitted to and reviewed by OSMRE and the public.

By letters dated March 29 and April 28, 1989 (Administrative Record Nos. NM-489 and NM-490), New Mexico submitted to OSMRE copies of the rules that it had promulgated (effective April 28, 1989) subsequent to OSMRE's approval. Upon comparing the OSMRE-approved rules and the State-promulgated rules, OSMRE identified differences in the two sets of rules. Because SMCRA requires consistency between State and Federal standards, OSMRE is further reviewing and soliciting public review of New Mexico's promulgated regulations to determine whether they are no less effective than the Federal regulations and no less stringent than SMCRA.

The rules for which OSMRE has noted differences between the OSMRE-approved and State-promulgated rules are: permit and exploration fees, Rule 80-1-5-25(b); water control for coal processing waste banks, Rule 80-1-20-83(b); disposal of noncoal wastes, Rule 80-1-20-89(a) and (d); backfilling and grading, Rules 80-1-20-102(b) and 80-1-20-103(a); inspection and enforcement, Rule 80-1-29-11(a); and training, examination, and certification of blasters, Rules 80-1-33-11, 80-1-33-14, and 80-1-33-15(e).

##### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the New Mexico program.

##### Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the



commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office may not be considered in the final rulemaking or included in the Administrative Record.

#### Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on June 27, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

#### Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the amendments may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

#### List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: June 2, 1989.

[FR Doc. 89-13842 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TN-078; FRL-3600-7]

#### Approval and Promulgation of Implementation Plans; Tennessee: PM<sub>10</sub> Revisions for Nashville/Davidson County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On December 14, 1988, the State of Tennessee submitted revisions to the Nashville/Davidson County portion of its State Implementation Plan (SIP) for particulate matter. The revisions became State-effective on June 8, 1988, and November 16, 1988. The revisions were adopted pursuant to the requirements of Section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "PM<sub>10</sub>" standards.

**DATE:** To be considered, comments must reach us on or before July 12, 1989.

**ADDRESSES:** Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below).

Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency,  
Region IV, Air Programs Branch, 345  
Courtland Street, NE., Atlanta,  
Georgia 30365.

Tennessee Department of Health and  
Environment, Division of Air Pollution  
Control, 4th Floor, Customs House,  
701 Broadway, Nashville, Tennessee  
37219-5403.

Metropolitan Health Department,  
Bureau of Pollution Control, 311-23rd  
Ave. North, Nashville, Tennessee  
37203.

**FOR FURTHER INFORMATION:** Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864.

**SUPPLEMENTARY INFORMATION:** Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM<sub>10</sub>.

The PM<sub>10</sub> standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that states must develop and implement PM<sub>10</sub> control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of PM<sub>10</sub> air quality levels predicted from actual TSP data and concluded that Nashville/Davidson County was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM<sub>10</sub> standards. However, the Nashville/Davidson County portion of the Tennessee SIP still needs to be revised to address the PM<sub>10</sub> NAAQS in the following ways:

- To include ambient air quality standards for PM<sub>10</sub> at least as stringent as the NAAQS.
- To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM<sub>10</sub> emissions.
- To invoke the emergency episode plan to prevent PM<sub>10</sub> concentrations from reaching the significant harm level of 600 µg/m<sup>3</sup>.
- To meet ambient PM<sub>10</sub> monitoring requirements of 40 CFR Part 58, and
- To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM<sub>10</sub> (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

In response to the above requirements, Nashville/Davidson County revised their regulations and the State of Tennessee submitted those regulations as revisions to the SIP. The definitions for "PM<sub>10</sub>," "PM<sub>10</sub> emissions," "particulate matter," and "total suspended particulates" have been added. The old definition for "particulate matter" has been deleted in its entirety and replaced with the federal definition.

In section 4-1-6, Incinerator Regulations, paragraph (f) was added. This paragraph exempts certain incinerators from 4-1-6 if they are covered by another regulation. This revision would allow Nashville to adopt additional regulations for specific classifications of incinerators.

In section 4-1-16, Registration and Permits, several housekeeping revisions have been made. No action will be taken on the deletion of subsection (c)(2) because it deals with operating permit regulations. Subsection (f)(3), has been revised to allow Nashville to adopt



additional regulations for specific classifications of incinerators.

Regulation No. 3, New Source Review, has also been revised. Several definitions in section 3-1, Definitions, have been revised. Paragraph (dd), "Secondary Emissions," was revised so that it does not exclude vessel emissions which occur during loading/unloading at the facility or which are dockside emissions. In paragraph (ee), "Significant," subparagraph (1) was revised to add PM<sub>10</sub> when referencing net emissions increase or a source's potential to emit. Subparagraph (2) limits the emissions impact on a nonattainment area. The limits for particulate matter and carbon monoxide were deleted and replaced with limits for sulfur dioxide, nitrogen dioxide, carbon monoxide and particulate matter. The definition "Volatile Organic Compound (VOC)" was added to section 3-1 as paragraph (gg). This definition has already been approved as part of Regulation No. 7, Regulation for Control of Volatile Organic Compounds, on January 27, 1989 at 54 FR 4020.

Several sentences were added to section 3-2, Registration and Permits, paragraph (b)(2)(ii)(A), to explain if and how emissions from source shutdowns or curtailments in production or operating hours could be used for offsets. Added to paragraph (e) was a brief description of the procedural requirements of 40 CFR 51.102 which is to be used for construction permit applications for new major sources or major modifications.

Paragraph (a)(1) of section 3-3, Prevention of Significant Deterioration (PSD) Review, pertains to the list of sources which have the potential to emit or emit 100 tons per year of any regulated air pollutant that are subject to PSD. The phrase, "any regulated air pollutant," has been deleted and replaced with "any pollutant subject to regulation under the Federal Clean Air Act."

Since EPA has not developed any maximum increase in emissions over the baseline concentration for particulate matter, Nashville revised paragraph (e)(2)(i) of section 3-3. The title of part (i) has been changed from "Particulate Matter" to "Total Suspended Particulate."

Section 3-3 (f) has been updated to reference modeling guidance Supplement A (1987).

The de minimis air quality level for PM<sub>10</sub> has been added to section 3-3 (g)(6)(i). Also, the de minimis levels for lead, beryllium, and hydrogen sulfide have been revised to correspond to the federal levels.

Paragraphs g(7) and (8) were added to section 3-3. These paragraphs reference monitoring requirements for PM<sub>10</sub>.

Emergency episode criteria were not included in this submittal. Nashville is in the process of developing those regulations. Action will be taken on the emergency episode criteria when they are submitted.

#### Proposed Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is proposing to approve the Tennessee PM<sub>10</sub> revisions, and is soliciting public comments.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above. Interested persons are invited to submit written comments within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects in 40 CFR Part 52

Air Pollution control, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: May 31, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 89-13846 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 295

#### Withdrawal of NPRM—Suspension of ODS Agreements for all or a Portion of the Vessels Included Therein

**AGENCY:** Maritime Administration (MARAD), Department of Transportation.

**ACTION:** Withdrawal, notice of proposed rulemaking (NPRM).

**SUMMARY:** In 1983, MARAD issued a NPRM implementing provisions in section 1603 of the Omnibus Budget Reconciliation Act of 1981. MARAD is now withdrawing that NPRM because it

is most unlikely that any operators that may elect to suspend operating-differential subsidy (ODS) contracts will do so.

**FOR FURTHER INFORMATION CONTACT:** Raymond Barberesi, Office of Trade Analysis and Insurance, Maritime Administration, Department of Transportation, Washington, DC 20590, Telephone No. (202) 366-2282.

**SUPPLEMENTARY INFORMATION:** The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amended the Merchant Marine Act, 1936, by adding a new section 614 (Snyder Amendment). That amendment allows an operator receiving ODS to make an election to suspend subsidy under its ODS Agreement with respect to all or a portion of its vessels. ODS suspension results in termination of all attendant statutory and contractual restrictions in the ODS agreement, except those pertaining to the domestic trade, but requires a pro rata repayment of any construction-differential subsidy (CDS), where applicable.

MARAD issued a NPRM on August 18, 1983 (48 FR 37449), establishing procedures that would implement this privilege of suspending ODS agreements. Subsequently, in 1984, the Maritime Subsidy Board (Board) began consolidated proceedings in Docket No. S-764 to consider applications by U.S.-flag subsidized bulk operators to amend their ODS agreements to allow the carriage of preference cargoes (U.S. government-impelled cargoes reserved to U.S.-flag vessels) without subsidy.

In its Tentative Opinion and Order (September 25, 1985), tentatively granting conditional approval of these applications, the Board found that the Snyder Amendment does not by its terms limit the Board's ability to mutually amend an ODS agreement. The Board had previously found that the amendment was not intended to be exclusive, which finding was upheld on Court review.

The Board's Final Opinion and Order in Docket S-764 became effective on April 15, 1986. The six bulk operators that had elected to suspend their ODS Agreements, with respect to eight vessels, had reinstated them by that date. Since the Board's Order did not require the repayment of CDS as a condition for amending ODS agreements for the purpose of allowing the carriage of bulk preference cargoes without subsidy, bulk operators have found that procedure to be a preferable alternative to suspending their ODS agreements and repaying CDS. The operator of the only



liner vessels to make an election under the Snyder amendment is in bankruptcy.

Accordingly, since it appears most unlikely that any subsidized operators will elect in the future to suspend their ODS agreement pursuant to the Snyder Amendment, MARAD is hereby withdrawing its NPRM.

By order of the Maritime Administrator.

Dated: June 6, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-13843 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-61-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1002

[Ex Parte No. 246 (Sub 7)]

### Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1989 Update

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is required by the regulations in 49 CFR 1002.3 to update user fees annually. The Commission's update formula is contained in 49 CFR 1002.3. In this decision, the Commission is proposing its 1989 Update.

In 1989, the Commission conducted a Cost Study of various fee items to ensure that the fee for these items reflect current Commission cost for Performing those services. As a result of the cost study, various fees are proposed to be adjusted in this proceeding.

In Ex Parte No. 246 (Sub-No. 6), Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—1988 Update, 53 FR 33813, (September 1, 1988), the Commission deferred increases in the fees for complaint and declaratory order type proceedings, pending further study and review of the issues which relate to those fee items. Those matters are being resolved in this proceeding. Also, in this proceeding, the Commission proposes to modify 49 CFR 1002.2(d)(3) to clarify the fee policy relating to motor finance temporary authority proceedings.

The Commission does not believe that this proposal to increase fees will have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship is established.

**DATE:** Comments are due by July 12, 1989.

**ADDRESS:** Send an original and 15 copies of the comment to: Ex Parte No. 246 (Sub-No. 7), Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

### FOR FURTHER INFORMATION CONTACT:

Kathleen M. King, 202-275-7428.

For costing information contact: Michael

A. Stolica, 202-275-7765.

TDD for hearing impaired: 202-275-1721.

### SUPPLEMENTARY INFORMATION:

The Commission is required by its regulations at 49 CFR § 1002.3 to update fees annually. The 1989 update factors are as follows:

	Percent
FY-1989 General Pay Increases.....	4.1
Government Fringe Benefits.....	49.55
Operation Overload .....	8.97
Office General & Administrative Expenses .....	22.66
Commission General & Administrative Expenses .....	10.69

As a result of these increases the fully distributed costs for all fees increased. However, due to the Commission's rounding procedures which are set forth in 49 CFR 1002.3(e), not all fees increased. The resulting proposed fee schedule is set forth below.

Also, in this proceeding, the Commission is modifying 49 CFR 1002.2(d)(3) to clarify that a separate fee is assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in 49 CFR 1002.2(f)(24) regardless of whether such application is related to a corresponding transfer proceeding as provided for in 49 CFR 1002.2(f)(25), an application under 49 U.S.C. 11343 as provided for in 49 CFR 1002.2(f)(21), or a notice of exemption as provided in 49 CFR 1002.2(f)(27).

A copy of the Commission's full decision in this matter is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423 (202-275-7428).

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources.

### List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information and user fees.

Title 49 of the Code of Federal Regulation is proposed to be amended as set forth below.

Decided: May 31, 1989.

By the Commission, Chairman Gradison,

Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1002, of the Code of Federal Regulations is proposed to be amended as follows:

### PART 1002—FEES

1. The authority citation for Part 1002 will continue to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

#### § 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "18.00" in paragraph (b) would be revised to read "\$19.00."

3. In § 1002.1, the dollar amount of "\$12.00" in paragraph (c) would be revised to read "\$13.00."

4. In § 1002.1, the table in paragraph (f)(6) would be revised to read as follows:

Grade	Rate
GS-1.....	\$5.55
2.....	6.04
3.....	6.81
4.....	7.64
5.....	8.55
6.....	9.53
7.....	10.59
8.....	11.72
9.....	12.95
10.....	14.26
11.....	15.67
12.....	18.78
13.....	22.33
14.....	26.39
15 & over.....	31.04

5. In § 1002.2, paragraph (d)(3) would be revised to read as follows:

#### § 1002.2 Filing fees

\* \* \* \* \*

(d) \* \* \*

(3) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraphs (f) (8), (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority. A separate fee will be assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in paragraph (f)(24) regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(25) or a notice of exemption as provided for in paragraph (f)(27).

\* \* \* \* \*

6. In § 1002.2, paragraph (f) would be revised to read as follows:



## (f) Schedule of filing fees.

Type of proceedings	Fees
<b>Part I: Non-Rail Applications for Operating Authority or Exemptions</b>	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.....	\$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.....	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64.....	2,200
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number.....	40
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.....	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107-1160.114.....	250
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a).....	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b).....	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).....	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.....	19
(11) Request for name change of carrier, broker, or household goods freight forwarder.....	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4.....	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).....	60
(14) [Reserved].....	
(15) A joint petition to substitute applicant in a pending operating rights proceeding.....	22
(16) [Reserved].....	
<b>Part II: Non-Rail Applications to Discontinue Transportation</b>	
(17) An notice or petition to discontinue ferry service under 49 U.S.C. 10908.....	9,000
(18) A petition to discontinue motor carrier of passenger transportation in one state.....	1,000
(19) [Reserved].....	
<b>Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement</b>	
(20) An application for the pooling or division of traffic.....	1,700
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.....	850
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706.....	11,000
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment.....	1,800
(ii) Minor amendment.....	40
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.....	200
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.....	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d).....	150
(27) A petition for exemption under 49 U.S.C. 11343(e).....	200
(28)-(32) [Reserved].....	
<b>Part IV: Rail Applications for Operating Authority</b>	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.....	2,900
(ii) Exempt transaction under 49 CFR 1150.31.....	1,500
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).....	3,500
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).....	2,000
(36) [Reserved].....	
(37) [Reserved].....	
<b>Part V: Rail Applications to Discontinue Transportation Services</b>	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act bankrupt railroads or exempt abandonments under 49 CFR 1152.50).....	6,400
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.....	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.....	750
(41) Exempt abandonments. 49 CFR 1152.50.....	3,700
(42) A notice or petition to discontinue passenger train service.....	9,000
(43) [Reserved].....	
<b>Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement</b>	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.....	7,600
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.....	4,100
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction.....	148,200
(ii) Significant transaction.....	29,600
(iii) Minor transaction.....	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)].....	600
(v) Responsive application.....	2,500



Type of proceedings	Fees
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction.....	148,200
(ii) Significant transaction.....	29,600
(iii) Minor transaction.....	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)].....	600
(v) Responsive application.....	2,500
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction.....	148,200
(ii) Significant transaction.....	29,600
(iii) Minor transaction.....	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)].....	600
(v) Responsive application.....	2,500
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction.....	148,200
(ii) Significant transaction.....	29,600
(iii) Minor transaction.....	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)].....	600
(v) Responsive application.....	2,500
(50) An application for a determination of fact of competition. 49 U.S.C. 11321 (a)(2) or (b).....	29,600
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706.....	27,900
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment.....	5,200
(ii) Minor amendment.....	40
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.....	300
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175. 49 U.S.C. 11301.....	1,300
(ii) An exempt transaction under 49 CFR 1175.....	600
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505:	
(i) Financial exemption petitions.....	3,700
(ii) Abandonment exemption petitions.....	5,000
(iii) Other exemption petitions.....	3,000
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40-49, 45 U.S.C. 915.....	1,500
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	

## Part VII: Formal Proceedings

(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods.....	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A).....	3,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.....	600
(ii) All other petitions for declaratory order.....	1,100
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.....	6,100
(64) A petition for exemption from filing tariffs by bus carriers.....	600
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).....	2,800
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501.....	1,000
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.....	1,700
(68)-(71) [Reserved]	

## Part VIII: Informal Proceedings

(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).....	450
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.....	50
(74) The filing of tariffs, rate schedules and contracts including supplements.....	18
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of \$25,000 or less).....	60
(76) Informal complaint about rail rate application.....	200
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD).....	3,000
(ii) An application for original qualification as self-insurer for cargo insurance.....	300
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of \$10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a \$50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond).....	210
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR 1057.....	300
(80) A petition for reinstatement of revoked operating authority.....	50
(81) [Reserved]	
(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application.....	300
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).....	15
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings.....	1,100
(86) Informal opinions about rate applications (all modes).....	40
(87)-(95) [Reserved]	

## PART IX: Services

(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.....	11
(97) Request for service list for proceedings.....	8



Type of proceedings	Fees
(98) Requests for copies of the one-percent carload waybill sample.....	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation .....	15
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.....	70

<sup>1</sup> Per series transmitted.<sup>2</sup> Per accepted certificate or other instrument submitted in lieu of a broker surety bond.<sup>3</sup> Per document.<sup>4</sup> Per delivery.<sup>5</sup> Per list.<sup>6</sup> Per movement verified.

[FR Doc. 89-13838 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

**49 CFR Part 1054****Incidental Charter Rights;  
Simplification of Regulations****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of proposed rules.

**SUMMARY:** The Commission proposes to revise its regulations, as set forth below, governing the exercise of "incidental charter rights" under 49 CFR 1054 and 49 U.S.C. 10932(c). The proposed rules would simplify and broaden somewhat the present rules, which have become practically obsolete as a consequence of the statutory amendments in the Bus Regulatory Reform Act of 1982.

**DATE:** Comments are due on July 27, 1989.

**ADDRESS:** Send an original and 10 copies of comments, referring to Ex Parte No. MC-29 (Sub-No. 5), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

Richard B. Felder, (202) 275-7691

or

James L. Brown, (202) 275-7898

(TDD for hearing impaired: (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:** The Commission's decision contains additional information. To obtain a copy of the decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

**Environmental and Energy  
Considerations**

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human

environment or the conservation of energy resources.

**Regulatory Flexibility Analysis**

The proposed amendment would simplify the regulations applicable to "incidental charter rights," eliminate a number of obsolete requirements, and broaden the territorial scope of incidental charter authority to that typically authorized in certificates specifically authorizing charter operations. Very few, if any, carriers actually use incidental charter rights at this time. Most small entities that do not hold qualifying regular-route authorities already have or can easily obtain specific charter authority through "fitness-only" application procedures. As a consequence, although all discernible impacts of this action would be positive, no significant impact is anticipated on any small entities.

**List of Subjects in 49 CFR Part 1054**

Buses, Motor carriers.

**Authority:** 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1054 of the Code of Federal Regulations is proposed to be revised to read as follows:

**PART 1054—INCIDENTAL CHARTER  
RIGHTS**

Sec.

1054.1 Applicability.

1054.2 Authority.

1054.3 Exceptions.

**Authority:** 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

**§ 1054.1 Applicability.**

The regulations in this part apply to incidental charter rights authorized under 49 U.S.C. 10932(c). These regulations do not apply to the interpretation of authority contained in

a certificate to transport passengers in special and/or charter operations.

**§ 1054.2 Authority.**

Motor carriers transporting passengers, in interstate or foreign commerce, over regular routes authorized in a certificate issued as a result of an application filed before January 2, 1967, may transport special or chartered parties, in interstate or foreign commerce, between any points and places in the United States (including Alaska and Hawaii). The term "special or chartered party" means a group of passengers who, with a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary.

**§ 1054.3 Exceptions.**

(a) Incidental charter rights do not authorize the transportation of passengers to whom the carrier has sold individual tickets or with whom the carrier has made separate and individual transportation arrangements.

(b) Service provided under incidental charter rights may not be operated between the same points or over the same route so frequently as to constitute a regular-route service.

(c) Passenger transportation within the Washington Metropolitan Area Transit District (as defined in the Washington Metropolitan Area Transportation Regulation Compact, Pub. L. No. 86-794, 74 Stat. 1031 (1960), as amended by Pub. L. No. 87-767, 76 Stat. 764 (1962)) is not authorized by these regulations, but is subject to the jurisdiction and regulations of the Washington Metropolitan Area Transportation Commission.

(d) A private or public recipient of governmental assistance (within the meaning of 49 U.S.C. 10922(c)(1)(F)) may provide service under incidental charter rights only for special or chartered parties originating in the area in which the private or public recipient provides regularly scheduled mass transportation



services under the specific qualifying certificate that confers its incidental charter rights.

[FR Doc. 89-13878 Filed 6-9-89; 8:45 am]  
BILLING CODE 7035-01-M

#### 49 CFR Part 1171

[Ex Parte No. 55 (Sub-No 74A)]

#### Applications for Certificates of Registration for Certain Foreign Carriers

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rules.

**SUMMARY:** The Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B of the Anti-Drug Abuse Act of 1988; Pub. L. No. 100-690, 102 Stat. 4181) amends the requirements in 49 U.S.C. 10530 and 10922(1) for certain foreign motor carriers and foreign motor private carriers to obtain a certificate of registration to operate in the United States. The Act changed the coverage of the registration requirement, changed the duration of the certificates of registration, and authorized potential changes in insurance requirements. This rulemaking proceeding: (1) Discusses the statutory changes; and (2) proposes amendments to the rules governing applications for certificates of registration to implement the new law.

**DATES:** Comments are due July 12, 1989.

**ADDRESSES:** Send pleadings [original and 10 copies] referring to Ex Parte No. 55 (Sub-No. 74A) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 275-7691 or Joseph B. O'Malley, (202) 275-7928. (TDD for hearing impairment: (202) 275-1721).

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

#### Energy and Environmental Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human

environment or conservation of energy resources.

#### Regulatory Flexibility Analysis

The Commission certifies that these rules will not have significant economic impact on a substantial number of small entities. The proposed modifications will continue an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates of registration consistent with statutory changes.

#### Paperwork Reduction Analysis

It is estimated that an average of 1 burden hour per response is required to complete the information elicited on the proposed revised licensing Form OP-2. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120-0079), Washington, DC 20503.

#### List of Subjects in 49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,  
Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1171, of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

1. The authority citation for 49 CFR Part 1171 would continue to read as follows:

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

2. Section 1171.1(a) is proposed to be revised to read as follows:

#### § 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530. Under this section certain foreign motor carriers

and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. Neither a foreign motor carrier nor a foreign motor private carrier may provide interstate transportation of property unless the Commission has issued the carrier a certificate of registration. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(1)(B).

3. Section 1171.2(a) is proposed to be revised to read as follows:

#### § 1171.2 Definitions.

(a) *The Act.* The Truck and Bus Safety and Regulatory Reform Act of 1988.

4. Paragraph (b) of § 1171.2 is proposed to be removed.

5. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are proposed to be redesignated as paragraphs (b), (c), (d), (e), (f), (g), and (h) in § 1171.2.

6. Newly redesignated paragraphs (b) and (c) are proposed to be revised to read as follows:

#### § 1171.2 Definitions.

(b) *Foreign motor carrier.* A person transporting the goods of others for hire (including a motor carrier of property):  
(1) Which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923;

(2) Which is domiciled in any contiguous foreign country, or is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor carrier of property, which provides interstate transportation of property under an agreement or contract with a motor carrier of property (except a motor carrier described in (2)).

(c) *Foreign motor private carrier.* A person transporting its own goods (including a motor private carrier):

(1) Which is domiciled in any contiguous foreign country;

(2) Which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor private carrier which provided interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor private carrier described in paragraphs (c) (1) and (2) of this section).



7. Section 1171.3(b) is proposed to be revised to read as follows:

**§ 1171.3 Procedures used generally.**

(b) Under the statute, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the statute.

8. Sections 1171.6(b) (2) and (c) are proposed to be revised to read as follows:

**§ 1171.6 Commission review of the application.**

(b) \* \* \*

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations provided that applicant has demonstrated compliance with:

(i) 49 CFR Part 1044 (designation of process agent); and

(ii) 49 CFR Part 1043 (insurance).

If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be decided by the Commission. If the Commission grants all or part of the application, it will issue a certificate in accordance with the procedure described in 49 CFR 1171.6(b)(2).

[FR Doc. 89-13877 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 642**

[Docket No. 90637-9137]

**Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The Secretary of Commerce issues a preliminary notice of change in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework

procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes (1) for Gulf and Atlantic migratory groups of king mackerel, increases in TAC, allocations, and quotas; and (2) for Gulf and Atlantic migratory groups of Spanish mackerel, increases in TAC and allocations. The intended effects are to protect the mackerels and continue stock rebuilding programs while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

**DATE:** Written comments must be received on or before June 21, 1989.

**ADDRESS:** Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Group's 1989 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to TACs, allocations, and quotas.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1989, annual TACs be set at 4.25 million pounds (m. lbs.) for the Gulf migratory group of king mackerel and 5.25 m. lbs. for the Gulf migratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1989, annual TACs be set at 9.00 m. lbs. for the Atlantic migratory group of king mackerel and 6.00 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of acceptable biological catch determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC and the Gulf king mackerel

commercial allocation is divided into quotas for eastern and western zones. Under the fixed percentages and the proposed TACs, these allocations and quotas would be as follows:

Species	Million pounds
Gulf King Mackerel—TAC.....	4.25
Recreational allocation (68%).....	2.89
Commercial allocation (32%).....	1.36
Eastern zone (69%).....	0.94
Western zone (31%).....	0.42
Gulf Spanish Mackerel—TAC.....	5.25
Recreational allocation (43%).....	2.26
Commercial allocation (57%).....	2.99
Atlantic King Mackerel—TAC.....	9.00
Recreational allocation (62.9%).....	5.66
Commercial allocation (37.1%).....	3.34
Atlantic Spanish Mackerel—TAC.....	6.00
Recreational allocation (24%).....	1.44
Commercial allocation (76%).....	4.56

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended no changes in the bag limits applicable to the Gulf and Atlantic groups of king mackerel. For Spanish mackerel, the Councils recommended that the bag limits applicable to the eastern area of the Gulf migratory group and the southern area of the Atlantic migratory group (together, the two areas constitute the exclusive economic zone (EEZ) off Florida) be set at the number (not to exceed ten) proposed by the Florida Marine Fisheries Commission (FMFC) for Florida's waters for the 1989-90 fishing year. This recommendation was intended to ensure that the bag limits for Spanish mackerel in the EEZ off Florida would be compatible with the bag limit in Florida's waters. The FMFC met May 8-12, 1989, and acted to continue the current 4-fish bag limit for Spanish mackerel applicable to Florida's waters. Accordingly, no changes to the bag limits for Spanish mackerel in the EEZ off Florida are proposed.

The Regional Director initially concurs that the Councils recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

**Other Matters**

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

**List of Subjects in 50 CFR Part 642**

Fisheries, Fishing.



Dated: June 6, 1989.

James E. Douglas, Jr.,  
Deputy Assistant Administrator For  
Fisheries, National Marine Fisheries Service.

For the reasons set forth in the  
preamble, 50 CFR Part 642 is proposed  
to be amended as follows:

**PART 642—COASTAL MIGRATORY  
PELAGIC RESOURCES OF THE GULF  
OF MEXICO AND SOUTH ATLANTIC**

1. The authority citation for Part 642  
continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

**§ 642.21 [Amended]**

2. In § 642.21, the numbers are revised  
in the following places as follows:

Paragraph	Removed	Added
(a)(1), introductory text.....	1.09	1.36
(a)(1)(i).....	0.75	0.94
(a)(1)(ii).....	0.34	0.42
(a)(2), first sentence.....	2.60	3.34
(b)(1).....	2.31	2.89
(b)(2).....	4.40	5.66
(c)(1).....	2.85	2.99
(c)(2).....	3.04	4.56
(d)(1).....	2.15	2.26
(d)(2).....	0.96	1.44

[FR Doc. 89-13807 Filed 6-6-89; 4:24 pm]

BILLING CODE 3510-22-M



## Notices

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

[Docket No. 89-098]

#### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Cotton Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company, to allow the field testing in the State of Alabama of cotton plants genetically engineered to express a modified 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Biotechnologist,

Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession under 89-034-10.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test genetically engineered cotton plants modified to express 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plant under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and

analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Petunia hybrida* encoding a modified 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate, has been inserted into a cotton chromosome. In nature, chromosomal genetic material of flowering plants is transferred to another sexually compatible plant by cross-pollination. In this field trial, the introduced gene cannot spread to another plant by cross-pollination because the field pest plot is located at a sufficient distant from any sexually compatible plant with the which these experimental cotton plants might cross-pollinate.

2. Neither the 5-enolpyruvyl shikimate-3-phosphate synthase gene itself, nor its gene product, confers on cotton any plant pest characteristic. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant species (*Petunia hybrida*) from which the 5-enolpyruvyl shikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl shikimate-3-phosphate synthase gene does not provide the transferred cotton plants with any measurable selective advantage over nontransformed cotton in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl shikimate-3-phosphate synthase gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the 5-enolpyruvyl shikimate-3-phosphate synthase gene into cotton plant cells. The vector agent has been known to be eliminated and no



longer associated with any transformed cotton plant.

7. Horizontal movement of the 5-enolpyruvyl shikimate-3-phosphate synthase gene is not possible. The vector does not survive in or on any transformed cotton plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

8. Glyphosate is the active ingredient of the herbicide Roundup<sup>®</sup>. Roundup<sup>®</sup> is a broad spectrum postmergence herbicide which is rapidly degraded in the environment and has low toxicity to organisms other than plants and micro-organisms.

9. The field test site is small and will be no greater than 0.5 acre. The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13883 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-093]

#### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Potato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in the State of Idaho of potato plants genetically engineered to express the coat protein genes of potato virus X and potato virus Y. The assessment provides a basis for the conclusion that the field testing of these genetically engineered potato plants will not

present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

#### FOR FURTHER INFORMATION CONTACT:

Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-030-03.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test potato plants genetically engineered to express the coat protein genes of potato virus X and potato virus Y.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the potato plant under the conditions described in the Monsanto Agricultural

Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the viral coat proteins of potato virus X and potato virus Y have been inserted into the potato chromosome. In nature, chromosomal genetic material of these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the potato plants are male sterile.

2. Neither the viral coat protein genes themselves, nor their gene products, confer on potato any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The expression of the viral coat protein genes does not provide the transformed potato plants with any measurable selective advantage over nontransformed potato plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the plant viral genes to the potato plants has been evaluated for its use in this specific experiment and although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the plant viral coat protein genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed potato plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.



7. The field test site is small (less than 0.5 acre) and is physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC., this 6th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13884 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket 89-094]

#### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tomato Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Hughson, California, of genetically engineered tomato plants modified to express a gene from *Bacillus thuringiensis* var. *kurstaki* HD1 that encodes a protein called delta-endotoxin, which is lethal to the larvae of some lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal

and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

#### FOR FURTHER INFORMATION CONTACT:

Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-030-02.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express a gene from *Bacillus thuringiensis* var. *kurstaki* HD1 that encodes a protein called delta-endotoxin.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plant under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and

analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *B. thuringiensis* var. *kurstaki* HD1 encoding the delta-endotoxin protein has been inserted into a tomato chromosome. The expression of this gene provides tolerance against the larvae of select lepidopteran insects. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduced gene can spread to another plant by cross-pollination, because the field test plot is located a sufficient distance from any sexually compatible plant with which these experimental tomato plants could cross-pollinate.

2. Neither the delta-endotoxin gene itself, nor its gene product confers on tomato any plant pest characteristic.

3. The bacterium from which the delta-endotoxin gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector used to transfer the delta-endotoxin gene to tomato plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the delta-endotoxin gene into tomato plant cells. The vector agent has been shown to be eliminated and no longer associated with any transformed tomato plant.

6. Horizontal movement or gene transfer of the delta-endotoxin gene is not possible. The vector acts by delivering and inserting the gene into a tomato chromosome (i.e., chromosomal DNA). The vector does not survive in or on any transformed tomato plant. No mechanism for horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The toxic polypeptide produced by the engineered gene is called delta-endotoxin. Upon ingestion, the toxin kills only the larvae of select lepidopteran insects. Delta-endotoxin is



not toxic to other insects, wild or domestic birds, fish, or mammals. Because of its safety, its topical application on crops is permitted up to the time of harvest.

8. The size of the field test plot is small (0.2 acre and a total of 600 transformed tomato plants) and will be located on a private research farm in a rural area. The field test plot will be located at least 30 feet from breeder or commercial tomato plants and is surrounded by other agronomic crops and orchards.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13885 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Early Winters Alpine Winter Sports Site; Intent To Prepare a Supplement to an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplement to an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final Environmental Impact Statement (EIS) for the Early Winters Alpine Winter Sports Study, Winthrop, Washington, filed in July 1984. The Draft Supplement will reassess potential air pollution impacts on the Pasayten Wilderness due to off-site development which may result from the project. The Draft Supplement will also clarify project objectives and discuss reasonable alternatives to meet those objectives, in accord with the decision in *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-816 (9th Cir. 1988). Finally, the Draft Supplement will consider the results of the study now in progress concerning the impacts of off-site development on

mule deer and any new off site mitigation commitments or plans.

The Agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the Draft Supplement. The agency is giving notice of the Draft Supplement and the decision-making process that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis must be received by July 10, 1989.

**ADDRESS:** Submit written comments and suggestions concerning the scope of the analysis to Bill McLaughlin, Forest Supervisor, Okanogan National Forest, 1240 South Second, Okanogan, Washington 98840.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the Draft Supplement to Jim Gregg, Project Coordinator, Winthrop Ranger District, Box 579, Winthrop, Washington 98862, phone 509-996-2266.

**SUPPLEMENTARY INFORMATION:** The Early Winters Alpine Winter Sports Study was completed in July of 1984 with a Record Of Decision selecting an alternative to issue a special use permit for ski facilities on approximately 3900 acres of National Forest System land at Sandy Butte, in a previously undeveloped area in north central Washington. The project has been controversial since its inception and there has been extensive litigation. In December of 1987 the United States Ninth Circuit Court of Appeals overturned the decision of the district court, which had determined that the Early Winters Study fulfilled the Forest Service's environmental obligations. In May of 1989 the United States Supreme Court overturned two of the Ninth Circuit's rulings involving "worst case" analysis and "fully developed" mitigation plans. Two additional issues addressed by the Ninth Circuit were not presented to the Supreme Court and will be the major focus of this DSEIS.

1. *Pasayten Wilderness Air Quality Analysis.* The Court of Appeals found the discussion of air quality impacts on the Pasayten Wilderness to be inadequate for failing to consider that the Lost River drainage provides little elevation difference and, therefore, no barrier to pollution from the Methow Valley. The Draft Supplement will address this issue by using the most current air quality analysis information that has been developed to date. By updating the air quality values used in the valley bottom and projecting to the Lost River area, the Draft Supplement

will assess the effect on the Wilderness. Such an update will rely upon recent studies done in the Methow Valley on the effects of total suspended particulates, wood stoves carbon monoxide and effects on the prevention of significant deterioration to the program. The Draft Supplement will also include information on the air quality management ordinance which was adopted by Okanogan County since the original EIS was completed.

2. *Alternative Site Discussion.* The Court of Appeals further found that the discussion of alternative sites to the Early Winters site to be inadequate. The court directed the Forest Service to " \* \* \* more clearly articulate its goal, specifically identifying the market and geographic pool of skiers targeted. This will provide a clear standard by which it can determine which alternatives are appropriate for investigation and consideration in its EIS." *Methow Valley*, 833 F.2d at 816. This will be done in the Draft Supplement.

In addition the initial Early Winters Study contemplates further study of the impacts of off-site development on mule deer and further development of off-site mitigation measures. The Draft Supplement will discuss the results of the current mule deer study and any new mitigation plans or commitments to date.

James F. Torrence, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

The Draft Supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 15, 1989. At that time EPA will publish a notice of availability of the Draft Supplement in the *Federal Register*.

The comment period on the Draft Supplement will be 45 days from the date the notice of availability appears in the *Federal Register*. It is very important that those interested in the Draft Supplement participate at that time. To be the most helpful, comments should be as specific as possible. In addition, federal court decisions have established that those who wish to participate in the process must do so in a meaningful way that alerts the agency to their position. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the Draft Supplement stage may be waived if not raised until after the Final Supplement. *City of Angoon v. Hodel* (9th Circuit, 1986), and *Wisconsin Heritage, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure



that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them.

After the comment period ends on the Draft Supplement, the comments will be analyzed and considered by the Forest Service in preparing the Final Supplement. The Final Supplement is scheduled to be completed by February 9, 1990. In the Final Supplement the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the Final Supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record Of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Date: June 5, 1989.

Mary Jo Lavin,

Acting Regional Forester.

[FR Doc. 89-13814 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-11-M

#### Committee on State Foresters; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Committee of State Foresters will meet in Vail, Colorado, on July 13, 1989, from 8 a.m. to 12 p.m. The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee to consult with the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978 (Pub. Law 95-313). The Chief of the Forest Service will chair this meeting, which is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

**DATE:** The meeting will be held July 13, 1989.

**ADDRESSES:** The meeting will be held at Manor Vail, 595 East Vail Valley Drive, Vail, Colorado, (303) 476-5651.

Send written comments to Allan J. West, Executive Secretary, Committee of State Foresters, c/o Forest Service,

USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-6657.

**FOR FURTHER INFORMATION CONTACT:** Robert Breazeale, Office of the Deputy Chief for State and Private Forestry, (202) 447-9195.

Allan J. West,

Deputy Chief, State and Private Forestry.

Date: June 6, 1989.

[FR Doc. 89-13882 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-11-M

#### CIVIL RIGHTS COMMISSION

##### State Advisory Committee: Washington, DC.; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that the United States Commission on Civil Rights will convene a consultation at 8:30 a.m. on June 16, 1989, and adjourn at 12:00 noon the same day, in the Commission's conference room, 1121 Vermont Avenue, NW, Room 512, Washington, District of Columbia. The purpose of the consultation is to receive presentations on the subject of the validity of testing in education and employment.

Persons desiring additional information should contact James Cunningham, Director, Office of Programs, Policy and Research, (202) 376-8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-13810 Filed 6-9-89; 8:45 am]

BILLING CODE 6335-01

#### DEPARTMENT OF COMMERCE

##### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

*Title:* November 1989 Immigration and Emigration Supplement to the Current Population Survey.

*Form Number:* CPS-1, CPS-260, CPS-686.

*Agency Approval Number:* 0607-0610.

*Type of Request:* New.

*Burden:* 2,850 hours.

*Number of Respondents:* 57,000.

*Avg Hours Per Response:* 3 minutes.

*Needs and Uses:* The Federal Government uses the immigration data collected in this supplement to evaluate immigration and naturalization policies; it uses the emigration data to evaluate both current population estimates and 1990 decennial census coverage.

*Affected Public:* Individuals or households.

*Frequency:* One time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Don Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 1989.

Edward Michals,

Department, Clearance Officer, Office of Management and Organization.

[FR Doc. 89-13791 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-07-M

#### Bureau of Export Administration

[Docket No. 80862-8162]

##### Foreign Availability Determination; Low-Level Machine-Vision Systems

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice of foreign availability determination.

**SUMMARY:** Pursuant to section 5(f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) of the Bureau of Export Administration initiates and reviews claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment of low-level machine-vision systems, which are computer "related equipment" controlled under ECCN 1565A(h) of the Commodity Control List. Based on this assessment and following consultation with the Department of Defense, the



Department of Commerce has found foreign availability for machine-vision systems operating at the following parameters: (a) Image analysis rate of 3.3 images per second; (b) Pixel resolution of 65,536 (256×256); and (c) Two hundred and fifty-six shades of gray.

**FOR FURTHER INFORMATION CONTACT:** Maurice Cook, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

**SUPPLEMENTARY INFORMATION:**

**Foreign Availability Determination**

The Office of Foreign Availability has completed an assessment on the foreign availability of low-level machine-vision systems that are controlled as computer "related equipment" in paragraph (h) of ECCN 1565A, operating at the following parameters: (a) Image analysis rate of 3.3 images per second; (b) Pixel resolution of 65,536 (256×256); and (c) Two hundred and fifty-six shades of gray.

The purpose of the assessment was to determine whether national security export controls should be continued. The Office of Foreign Availability has completed an assessment of the availability from foreign sources of the above mentioned equipment and has recommended a finding of foreign availability as defined by law. Based on such assessment and recommendation, I hereby determine that foreign availability of such equipment exists within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, the Bureau of Export Administration is publishing regulations in the Rules section of this Federal Register to amend the national security export controls on these low-level machine-vision systems that are controlled under ECCN 1565A(h) by removing the individual validated license requirement to destinations in Country Groups T and V, except the People's Republic of China and Afghanistan. The Bureau of Export Administration also will begin the process whereby the United States Government will work with Coordinating Committee (COCOM) member governments to reach agreement on an orderly change in the multilateral controls maintained on such low-level machine-vision systems when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the

scope of this assessment may be directed to the Office of Foreign Availability at the above address.

This assessment also considered the foreign availability of low-level machine-vision systems that were then controlled under ECCN 1391(a)(1). The positive finding recommended by the assessment made a very significant contribution to the decontrol of "robot sensors" under that ECCN, which was agreed to by COCOM. Regulations implementing the decontrol were published in the Federal Register on September 15, 1988 (53 FR 35799).

Dated: June 7, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-13901 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

**International Trade Administration**

[A-588-810]

**Postponement of Preliminary Antidumping Duty Determination: Mechanical Transfer Presses From Japan**

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673 b(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of mechanical transfer presses from Japan have occurred at less than fair value until not later than July 21, 1989.

**EFFECTIVE DATE:** June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, James P. Maeder, Jr. or V. Irene Darzenta at (202) 377-3965, 377-4929 or 377-0186 Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On February 7, 1989, we published a notice of initiation (54 FR 5993) of an antidumping duty investigation to determine whether mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated

that we would issue our preliminary determination by June 21, 1989.

On May 25, 1989, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 30 days, until July 21, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has requested such postponement until not later than 190 days after the date on which the petition was filed. Accordingly, we are postponing the date of the preliminary determination until not later than July 21, 1989. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

May 31, 1989.

[FR Doc. 89-13792 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-804]

**Initiation of Antidumping Duty Investigation; 12-Volt Motorcycle Batteries From Korea**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of 12-volt motorcycle batteries (motorcycle batteries) from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of batteries materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before October 23, 1989.

**EFFECTIVE DATE:** June 12, 1989.

**FOR FURTHER INFORMATION CONTACT:** Lydia La Ferla or Mary S. Clapp, Office



of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1174 or (202) 377-3956, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On May 17, 1989, we received a petition filed in proper form by the Yuasa-Exide Battery Corporation on behalf of the domestic motorcycle battery industry. In compliance with the filing requirements of 19 CFR 352.12, petitioner alleges that imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to a U.S. industry.

Petitioner has indicated that it has standing to file the petition and that it is in an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under our revised regulations, parties seeking exclusion are required to submit their requests within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14 (54 FR 12773, March 28, 1989).

##### United States Price and Foreign Market Value

Petitioner's estimate of United States price (USP) for exporter's sales price transactions is based on 1988 list prices charged by the U.S. sales subsidiary of Global & Yuasa Battery Co., Ltd. (Global). Deductions were made for warranty rebates, credit, U.S. duty, ocean freight and insurance, foreign inland freight and insurance, U.S. inland freight and insurance, brokerage and handling, commissions, indirect selling expenses, and bank and other miscellaneous charges. Petitioner's estimate of USP for purchase price transactions is based on 1988 list prices of batteries sold by both Global and Korea Storage Battery Co., Ltd. to their

unrelated trading companies which were in turn sold to unrelated United States purchasers. These list prices, the most recent available to petitioner, were in effect through 1987. Petitioner made further adjustments, supported by affidavit, to account for price increases since that time. Deductions were made for foreign inland freight and insurance, ocean freight and insurance, U.S. duty, and brokerage, handling and miscellaneous fees.

Petitioner's estimate of foreign market value (FMV) is based on April 1989 price quotes by Global in Korea, less a sales discount. Where USP if ESP, f.o.b. prices were adjusted for inland freight and insurance, credit, and an ESP offset to U.S. commissions and indirect selling expenses. Where USP is PP, net prices were adjusted for inland freight and insurance, and credit.

Based on a comparison of FMV to USP, petitioner alleges dumping margins ranging from 51 to 124 percent.

##### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on motorcycle batteries from Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 26, 1989.

##### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The written description remains dispositive.

The products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated

from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. These batteries are mainly designed for use as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. Prior to 1987, such merchandise was classified under TSUSA items 683.05 and 683.01. In 1987 and 1988, such merchandise was classified under TSUSA item 683.0110. This merchandise is currently classifiable under HTS item 8507.10.00.

##### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

##### Preliminary Determination by ITC

The ITC will determine by July 3, 1989, whether there is a reasonable indication that imports of motorcycle batteries from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 6, 1989.

[FR Doc. 89-13904 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-05-M

##### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of issuance of export trade certificates of review.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to the Cherrex Corporation ("Cherrex"), Application No. 89-00005, and Valve Manufacturers Association of America ("VMA"),



Application No. 89-00007. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Certified Conduct

*CherreX—Application 89-00005*

#### Export Trade

1. *Products.* Processed red cherries (*prunus cerasus*) and cherry products, including cherry pie filling, water pack cherries, cherry juice concentrate, dried cherries, frozen pack cherries, individually quick frozen cherries, cherry sausage, and cherry jams, jellies, and sauces.

2. *Technology Rights.* Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works, involving cherry processing.

3. *Export Trade Facilitation Services (as they relate to the export of Products and Technology Rights).* Trade promotion, marketing, sales and transportation services (including packing, transportation, wharfing and handling, trade documentation, freight forwarding, storage, and customs clearance).

#### Export Markets

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

#### Members in Addition to the Applicant

Burnette Foods, Inc.; Buskirk Processing, Inc.; Cherry Central Cooperative, Inc.; Cherry Marketing Institute, Inc.; Comstock/Michigan Fruit Division, a division of Curtice Burns Foods; DeRuiter Farms; Great Lakes International Trading, Inc.; Great Lakes Packing Company; Ludington Fruit Exchange, Inc.; and Stanek & Sons, Inc.

#### Export Trade Activities and Methods of Operation

In connection with the export of Products and Technology Rights through CherreX, CherreX may, on behalf of and with the advice of the Members:

1. Negotiate and enter into agreements with buyers in the Export Markets;

2. Negotiate and enter into agreements with foreign governments and other persons in the Export Markets regarding the quantities, time periods, prices, terms, and conditions upon which the Members will export Products and/or Technology Rights through CherreX;

3. Allocate export sales and/or Export Markets among the Members on the basis of each Member's commitment of Products and/or Technology Rights for export;

4. Establish prices and terms of sale for the Export Markets;

5. Use the CherreX or other common brand or label;

6. Negotiate and enter into agreements, on behalf of and with the advice of the Members, for the provisions of Export Trade Facilitation Services (including trade shows, advertising, and contracting marketing services);

7. Share among the Members the cost of Export Trade Facilitation Services;

8. Grant exclusive distribution rights in Export Markets for Products and/or Technology Rights to non-Members. "Exclusive" means that the non-member distributor may agree not to represent any person or firm other than CherreX in the export of Products and/or Technology Rights in any Export Market; and/or CherreX may agree not to export Products and/or Technology Rights in any Export Market through any distributor other than that non-Member distributorship;

9. Advise and cooperate with the United States Government or any agency of the United States Government in establishing procedures regulating the export of Products and/or Technology Rights;

10. Conduct product research and design for Products (and develop, obtain, and license associated Technology Rights) only when conducted exclusively for export,

including meeting foreign regulatory requirements and foreign buyer specifications, and identifying and designing for foreign buyer preferences; provided, however, that the Export Trade Activities and Methods of Operation do not cover activity that relates to the use of Technology Rights for the U.S. domestic markets; and

11. Exchange information with and among the Members, and enter into and carry out agreements with and among the Members, as necessary to carry out the activities specified in paragraphs (1) through (10) above.

*VMA—Application No. 89-00007*

#### Export Trade

1. *Products.* Industrial valves, actuators, and related parts (SIC code 3494A); automatic valves (regulating and control type) and parts (SIC code 34947); solenoid operated valves and parts (SIC code 34948); nuclear valves (SIC code 34949); and other industrial valve related products.

2. *Services.* Engineering, design and services related to Products and to turnkey contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. *Export Trade Facilitation Services (as they relate to the export of Products and Services).* Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; and liaison with foreign government agencies, trade associations, and banking institutions.

4. *Technology Rights.* Patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), industrial designs, and *sui generis* forms of computer software protection associated with Products or Services.

#### Export Markets

The Export Markets include all parts of the world except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (b) Canada.



## Members in Addition to the Applicant

See Appendix A of this notice.

## Export Trade Activities and Methods of Operation

1. VMA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of VMA and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

h. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology Rights requirements of specific export customers or particular Export Markets.

2. One or more Members may enter into agreements wherein one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through the Member(s) acting as exclusive Export Intermediary and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. VMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its

services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such services.

3. VMA Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies, or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, available capacity to produce and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about Members' export operations, including without limitation sales and distribution networks established by Members in Export Markets and prior export sales by Members (including export price information).

4. VMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by VMA itself, or by agreement with one or more Members, or other parties.

5. The Members may meet to engage in the activities described in paragraphs one through four above.

6. VMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

7. VMA and/or its Members may refuse to provide Export Trade Facilitation Services or participation in the other activities described in paragraphs one through five above to non-members.

8. Members may license and sub-license Technology Rights in Export Markets to non-members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-member without coordination with VMA or any other Member. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any Export Market) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.



**Abbreviated Amendment Procedure**

New VMA members and current VMA members not listed in Appendix A may from time to time be incorporated in this Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in VMA membership, identifying all new VMA members that desire to become a member under this abbreviated amendment procedure and certifying for each new VMA member so identified its sales of Products and Services in its prior fiscal year. Notice of members so identified shall be published in the **Federal Register**. However, VMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure. This same procedure may be used by VMA to delete one or more Members from the Certificate.

For each Export Trade Certificate of Review, Export Trade Activities and Methods of Operation are subject to terms and conditions set forth in the Certificate. A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 6, 1989.

George Muller,  
Acting Director, Office of Export Trading  
Company Affairs.

**Appendix A**

AC Valve Inc., York, PA  
American Cast Iron Pipe Co., Birmingham, AL  
(including American-Darling Valve,  
Birmingham, AL; and American Valve &  
Hydrant Mfg. Co., Beaumont, TX)  
Anchor/Darling Valve Co., Rosemont, PA  
Armstrong International, Inc., Three Rivers,  
MI (including Everlasting Valve Company,  
Inc., South Plainfield, NJ)

Atwood & Morrill Co., Inc., Salem, MA  
Automax, Inc., Cincinnati, OH  
BW/IP International, Inc., Pump Division,  
Vernon, CA  
C & S Valve Company, Westmont, IL  
Cameron Iron Works, Inc., Houston, Texas  
Cashco, Inc., Ellsworth, KS  
Chicago Fluid Power Corporation, Fluid  
Torque Division, Streamwood, IL  
Clow Corporation, Division of McWane Inc.,  
Oskaloosa, IA  
Control Components, Inc., Rancho Santa  
Margarita, CA  
Contromatics, East Hartford, CT  
Conval, Inc., Somers, CT  
Copes-Vulcan, Inc., Lake City, PA  
Crane Co., King of Prussia, PA  
Crosby Valve & Gage Company, a Moorco  
Company, Wrentham, MA  
Daniel Industries, Inc., Houston, TX  
(including Daniel Flow Products, Inc.,  
Houston, TX; and Daniel Valve Company,  
Houston, TX)  
DeZURIK, a unit of General Signal, Sartell,  
MN  
Dresser Industries, Inc., Dresser Valve &  
Controls Division, The Woodlands, TX  
(including Industrial Valve Operations,  
Alexandria, LA; and Masoneilan North  
American Operations, Canton, MA)  
Durabla Manufacturing Company, Lionville,  
PA  
The Duriron Company, Inc., Cookeville, TN  
Dyna-Torque Co., Muskegon, MI  
EIM Valve Controls, Inc., Missouri City, TX  
Fisher Controls International, Inc.,  
Marshalltown, IA (including Posi-Seal  
International, Inc., North Stonington, CT)  
Foster Oilfield Equipment Company,  
Houston, TX  
Foxboro/Jordan, a division of Foxboro Co.,  
Milwaukee, WI  
GH Bettis, Waller, TX  
Garlock, Inc.—Valve & Industrial Plastics,  
Camden, NJ  
General Valve Company, Brookshire, TX  
Grinnell Corporation, Exeter, NH (including  
Grinnell Supply Sales Co., Cranston, RI)  
Groth Corporation, Houston, TX  
Harold Beck & Sons, Inc., Newtown, PA  
Henry Pratt Company, Aurora, IL  
ITT Barton Instruments, City of Industry, CA  
ITT Engineered Valves, Lancaster, PA  
J.M. Huber Corporation, Equipment Division,  
Borger, TX  
Jordan-Hex-Bestobell, Divisions of Richards  
Industries, Cincinnati, OH  
Kennedy Valve, Elmira, NY  
Kerotest Manufacturing Corp., Pittsburgh, PA  
Keystone International, Inc., Houston, TX  
(including Anderson, Greenwood & Co.,  
Bellaire, TX; Keystone Valve USA,  
Houston, TX; and Yarway Corporation,  
Blue Bell, PA)  
Kunkle Industries, Inc., Kunkle Valve  
Division, Fort Wayne, IN (including  
Lonergan Valve Division, Fort Wayne, IN)  
Leslie Controls, Inc., Tampa, FL  
Limitorque Corporation, Lynchburg, VA  
M&H Valve Company, Anniston, AL  
(including McWane, Inc., Birmingham, AL)  
Mark Controls Corporation, Skokie, IL  
(including Center Line Unit, Tulsa, OK; and  
Pacific Valves/Flowseal Unit, Long Beach,  
CA)

The Mastergear Corporation, Stanardsville,  
VA  
Milwaukee Valve Company, Inc., Milwaukee,  
WI  
Mueller Water & Gas Products Division,  
Decatur, IL  
Mueller Steam Specialty, Division of Core  
Industries, Lumberton, NC  
Neles-Jamesbury, Worcester, MA  
NIBCO Inc., Elkhart, IN  
Norris/O'Bannon, Tulsa, OK  
Orbit Valve Company, Little Rock, AR  
Plast-O-Matic Valves, Inc., Totowa, NJ  
Red Valve Company, Inc., Carnegie, PA  
Rockwell International Corp., Measurement &  
Flow Control Division (including Edward  
Globe, Gate and Check, Raleigh, NC;  
MARPA Business Unit, Niles, IL;  
McCanna Valve and Actuator Products  
Business Unit, Carpentersville, IL; and Plug  
Valves and Trunnion-Mounted Ball Valves  
Business Unit, Sulphur Springs, TX)  
Rotork Controls, Inc., Rochester, NY  
Smith Valve Corporation, Whitinsville, MA  
Spirax Sarco, Inc., Allentown, PA  
Stockham Valves & Fittings, Birmingham, AL  
Target Rock Corporation, E. Farmingdale, NY  
Technaflo Inc., Rovalve Division, Portland,  
OR (including L&M Division, Salem, VA)  
Teledyne Farris Engineering, Palisades Park,  
NJ  
Tom Wheatley Valve Company, Houston, TX  
United States Pipe and Foundry Co.,  
Birmingham, AL (including Valve & Fittings  
Plant, Chattanooga, TN)  
Val-Matic Valve & Manufacturing Corp.,  
Elmhurst, IL  
Valtek Incorporated, Springville, UT  
Valvcon Corporation, Milford, NH  
Velan Valve Corporation, Williston, VT  
Victaulic Company of America, Easton, PA  
(including TBV, Inc., Sutton, MA)  
The Walworth Company, Houston, TX  
Waterous Company, South Saint Paul, MN  
The Wm. Powell Company, Cincinnati, OH  
Worcester Controls Corp., Marlborough, MA  
Xomox Corporation, Cincinnati, OH.

[FR Doc. 89-13902 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

**Application No. 87-4A004****Export Trade Certificate of Review**

**AGENCY:** International Trade  
Administration, Commerce.

**ACTION:** Notice of issuance of an  
amended export trade certificate of  
review.

**SUMMARY:** The Department of  
Commerce has issued an amendment to  
the Export Trade Certificate of Review  
granted to the National Machine Tool  
Builders' Association on May 19, 1987.  
Notice of issuance of the Certificate was  
published in the **Federal Register** on  
May 22, 1987 (52 FR 19371).

**FOR FURTHER INFORMATION CONTACT:**  
George Muller, Acting Director, Office of  
Export Trading Company Affairs,  
International Trade Administration,



202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. The regulations implementing Title II are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Amended Certificate:

Export Trade Certificate of Review No. 87-00004 was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987. Notice of issuance of the Certificate was published in the Federal Register on May 22, 1987 (52 FR 19371).

The listing of "Members" named in NMTBA's Export Trade Certificate of Review, as previously amended, has been amended to include the following changes:

1. Each of the following companies has been added as a "Member" of the Certificate: Bryant Grinder Corporation, Springfield, VT; Command Corporation, Minneapolis, MN; Cross & Trecker Corporation, Bloomfield Hills, MI; Dayton Machine Tool Company, Dayton, OH; Empire Abrasive Equipment Corporation, Langhorne, PA; Fadal Engineering Company, Inc., N. Hollywood, CA; Genesis Systems Group Inc., Davenport, IA; Haumiller Engineering Company, Elgin, IL; Kleer-Flo Company, Eden Prairie, MN; Komo Machine, Inc., Sauk Rapids, MN; Lapmaster International, Morton Grove, IL; MHP Machines Inc., Cheektowaga, NY; Milman Engineering Inc., Chehalis, WA; Positech Corporation, Laurens, IA; Preco Industries, Lenexa, KS; PS Group, Inc., Telford, PA; R & B Machine Tool Company, Saline, MI; Rush Machinery Inc., Rushville, NY; Servo Products Company, Pasadena, CA; Siber Hegner North America Inc., Stamford, CT; Truxton Machinery, Inc., Hudson, NY; Unison Corporation, Ferndale, MI; West-Tech Automation Systems, Buffalo Grove, IL.

2. Each of the following companies has been deleted as a "Member" of the Certificate: ACRO LOC/CNC Systems; Laser Industries, Inc.; Oerlikon Motch Corporation; Quamco, Inc.; Roto Finish Company, Inc.; Superior Die Set Corporation; Turchan Enterprises, Inc.; and WCI Machine Tool & Systems Co.

3. The listing of the company name for each current "Member" cited in this paragraph has been changed to the new listing cited in this paragraph in parentheses as follows: Katy Industries, Inc. (American Machine & Science [Katy Inds.]); Cooper-Weymouth, Peterson (Cooper-Weymouth, Peterson Div., Reed National Corp.); Danley Machine Division/Connell Ltd. Partnership (Danley Machine Division/Connell Ltd. Partnership); Dake Division, JSS Corporation (Dake Division, JSJ Corporation); DeVlieg Machine Company (DeVlieg-Sundstrand); Drake Manufacturing Services, Inc. (Drake Manufacturing Services Company, Inc.); ES/Tech-Equipment Systems Technology Co. (Equipment Systems Technology Company); Gehring Corporation (Gehring L.P.); George Fischer-Bohle Machine Tool Corp. (George Fischer-Bohle Machine Tools Corp.); Giddings & Lewis—A Division of AMCO International Corp. (Giddings & Lewis, A Division of AMCA International Corp.); Greenfield Industries (Greenfield Industries—Geometric Division); Litton Industrial Automation System, Inc. (Litton Industrial Automation—Machining & Assembly Sys. Div.); MG Systems Division (MG Industries); National Broach & Machine (National Broach & Machine Company); P/A Industries Inc.; Schmidt, Geo. T. (Schmidt Inc., Geo. T.); Service Precision Grinding Co. (Service Precision Grinding Co., Inc.); Kayex-Spitfire (Spitfire, A Unit of General Signal); T-Drill (T-Drill Industries); Versa-Mil, Inc. (Versa-Mil Inc./Phillips Corporation); Vulcan Tool Corp. (Vulcan Tool Company); and Whitton Spindle Division (Whitton Spindle Division/GMN).

**EFFECTIVE DATE:** March 7, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 8, 1989.  
George Muller,  
Acting Director, Office of Export Trading  
Company Affairs.

[FR Doc. 89-13903 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

[Application No.: 88-00017]

#### Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Construction Industry Manufacturers Association ("CIMA"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Certified Conduct

##### Export Trade

##### 1. Products

Construction machinery and equipment, including parts and components (SIC code 3531); gas turbines and turbine generator set units, including parts and components (SIC code 3511); internal combustion engines, including parts and components (SIC code 3519); farm machinery and equipment, including parts and components (SIC code 3523); lawn and garden tractors and equipment, including parts and components (SIC code 3524); mining machinery and equipment, including parts and components (SIC code 3532), but excluding mineral beneficiation machinery (SIC code 35326); oil and gas field machinery and equipment, including parts and components (SIC code 3533); conveyors and conveying



equipment, including parts and components (SIC code 3535); overhead traveling cranes, hoists, and monorail systems, including parts and components (SIC code 3536); industrial trucks, tractors, trailers, and stackers, including parts and components (SIC code 3537); motors and generators, including parts and components (SIC code 3621); motor vehicles and bodies, including parts and components (SIC code 3711); truck bodies, including parts and components (SIC code 3713); truck trailers, including parts and components (SIC code 3715); ship building and repairing, including parts and components (SIC code 3731); and other construction equipment parts, attachments, accessories, components and assemblies not elsewhere classified.

## 2. Services

Engineering, technical, financial, and management services related to Products and to turn-key project contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

## 3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

## 4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing; financing; trade promotion; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; and taking title to goods

### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

### Export Trade Activities and Methods of Operation

1. CIMA and/or one or more of its Members may:

a. Engage in joint bidding, financing, leasing or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by Members in

Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of CIMA and/or its Members; provided, however, that CIMA and/or one or more of its Members shall make such solicitations or offers to non-member Suppliers on a transaction-by-transaction basis only and then only when the Members are unable to supply, at a price competitive under the circumstances, the requisite Products or Services for such transaction; provided further that CIMA and/or such Member may exchange only such information with such non-member Suppliers as is reasonably required by such transaction;

f. Coordinate with respect to the delivery, installation, assembly, and servicing of Products in Export Markets, including the establishment of joint warranty, service, parts warehousing and training centers in such markets;

g. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with CIMA or any Member;

h. Engage in joint promotional activities, such as advertising, trade shows, trade missions, demonstrations and field trips aimed at developing existing or new Export Markets; and,

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. CIMA and/or one or more of its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) CIMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CIMA or the Member(s) acting as exclusive Export

Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. CIMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. CIMA and/or one or more of its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to such prices, quality, quantity, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions and contracts for sale in Export Markets to be considered and/or bid on by CIMA and its Members;

e. Information about joint bidding, distribution, financing, selling, or servicing arrangements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, warehousing, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;



g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and,

h. Information about CIMA's or its Members' export operations, including without limitation sales and distribution networks established by CIMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CIMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by CIMA itself, or by agreement with Members or other parties.

5. CIMA and/or one or more of its Members may meet to engage in the activities described in paragraphs one through four above.

6. CIMA and/or one or more of its Members may forward to the appropriate individual Members requests for information received from a foreign government or its agent (including private pre-shipment inspection forms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

*Members (within the meaning of Section 325.2(1) of the Regulations)*

Barber-Greene Overseas, Inc.; Blaw-Knox Construction Equipment Corporation; J.I. Case Company; Caterpillar Inc.; Cedarapids Inc.; Century II Inc.; CMI Corporation; Etnyre International Ltd.; Gomaco Corporation; Ingersoll-Rand Company; Nordberg Inc.; Payhauler Corp.; Power Curbers, Inc.; Rexworks Inc.; Ross Company; ScanRoad, Inc.; Taylor Machine Works, Inc.; and Terex Corporation.

The Export Trade Activities and Methods of Operation described above are subject to standard and special terms, conditions and limitations set forth in the Export Trade Certificate of Review.

A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 6, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13790 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

#### North Shore University Hospital et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Correction

In FR Doc. 89-12473 at page 22612 in the Federal Register of May 25, 1989, Column 3, line 12, "Applicant: Tulane University" should read "Applicant: University of Utah."

Frank W. Creel,

Director, Statutory Import Programs Staff.  
[FR Doc. 89-13793 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DS-M

#### National Oceanic and Atmospheric Administration

##### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Squid/Mackerel/Butterfish Committee will meet on June 20-22, 1989, at the Annapolis Ramada, 173 Jennifer Road, Annapolis, MD. The Council's public meeting will begin at 8:30 a.m., on June 21 and will adjourn in the afternoon of June 22 at 3 p.m. The Council will discuss habitat and environmental conditions, the Surf Clam and Ocean Quahog Fishery Management Plan (FMP) Amendment #8, the Swordfish and Billfish FMPs, the Bluefish FMP hearing schedule, squid and butterfish specifications for 1990, and other fishery management and administrative matters. The meeting may be lengthened or shortened depending on progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

The Squid/Mackerel/Butterfish Committee will meet on June 20, 1989, from 1 p.m. to 4 p.m., to consider the squid and butterfish specifications for 1990.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Date: June 6, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13876 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-22-M

#### Marine Mammals; Application for Permit; Golden Nugget-Strip Corp. (P451)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Golden Nugget-Strip Corp., Operating as the Mirage, P.O. Box 610, Las Vegas, Nevada 89125.

2. *Type of Permit Requested:* Public display.

3. *Name and Number of Marine Mammals:* Bottlenose dolphins (*Tursiops truncatus*) 6.

4. *Type of Take:* The applicant proposes to maintain captive born or rehabilitated animals for the purpose of public display. If *Tursiops sp.* is not available other species (except *Orcinus orca*) will be considered for relocation. No take from the wild is requested or anticipated.

5. *Location and Duration of Activity:* No location is available at this time. Duration of request is 5 years.

In accordance with section 104(c) of the MMPA as amended, the applicant will offer a program for education purposes as a component of its proposed display program. The education program will include tours for schools with students in grades kindergarten through college, a program for visually impaired students, and a teacher training program. The applicant will offer free lectures and programs to local educational institutions and community groups. The applicant's facility will be open to the public on a regularly scheduled basis. To promote visitation the applicant will not charge admission.

The planned arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been reviewed by a licensed veterinarian, who has certified that such arrangements and facilities will be adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East



West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources,  
National Marine Fisheries Service, 1335  
East West Hwy., Room 7324, Silver  
Spring, Maryland 20910; and

Director, Southwest Region, National  
Marine Fisheries Service, 300 South

Ferry Street, Terminal Island, California  
90731-7415.

Nancy Foster,  
Director, Office of Protected Resources and  
Habitat Programs.

Date: June 5, 1989.

[FR Doc. 89-13822 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-22-M

## COMMODITY FUTURES TRADING COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Notice of information collection.

**SUMMARY:** The Commodity Futures  
Trading Commission has submitted  
information collection 3039-0007,  
Regulation of Domestic Exchange-  
Traded Options, to OMB for review and  
clearance under the Paperwork  
Reduction Act of 1980, Pub. L. 96-511.  
Commodity Futures Exchanges are

required to provide to the Commission  
weekly position data on any option  
trader who controls positions which are  
above reporting levels in any option  
expiration month and to provide the  
data by strike price for each option  
expiration. Such information is  
necessary for the exchanges and the  
Commission to enforce their option and  
futures speculative position limits.

**ADDRESS:** Persons wishing to comment  
on this information collection should  
contact Gary Waxman, Office of  
Management and Budget, Room 3228,  
NEOB, Washington, DC 20502, (202) 395-  
7340. Copies of the submission are  
available from Joseph G. Salazar,  
Agency Clearance Officer, (202) 254-  
9735.

**Title:** Regulation of Domestic Exchange-  
Traded Options.

**Control Number:** 3038-0007.

**Action:** Extension.

**Respondents:** Businesses (excluding  
small businesses).

**Estimated Annual Burden:** 72,882 hours.

**Estimated Number of Respondents:**  
190,195.

Respondents	Regulation (17 CFR)	Estimated No. respondents	Annual responses	Estimated average hours per response
Reporting:				
Businesses.....	33.4(a)(d)(f)(g) and 33.5.....	9	9	50
	33.4(b)(3).....	190,000	190,000	.17
	33.7 and 33.4(b)(9).....	175	26,250	.08
	33.7(d).....	175	10,500,000	.003
	16.02.....	11	10,923	.083
Recordkeeping:				
Businesses.....	33.8.....	225	225	25

Issued in Washington, DC on June 6, 1989.

Jean A. Webb,  
Secretary of the Commission.

[FR Doc. 89-13836 Filed 6-9-89; 8:45 am]

BILLING CODE 6351-01-M

### Membership of the Commission's Performance Review Board

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Membership Change of  
Performance Review Board; Notice of  
correction.

**SUMMARY:** This notice corrects the  
membership change of the Performance  
Review Board previously published in  
the Federal Register May 22, 1989, (54  
FR 22003) by adding Donald Tendick,  
Deputy Executive Director.

**FOR FURTHER INFORMATION CONTACT:**  
Stacy L. Dean, Director, Office of

Personnel, Commodity Futures Trading  
Commission, Room 202, 2033 K Street  
NW., Washington, DC 20581, (202) 254-  
3275.

Dated: June 6, 1989.

Jean A. Webb,  
Secretary of the Commission.

[FR Doc. 89-13837 Filed 6-9-89; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### Environmental Advisory Board; Meeting

**AGENCY:** U.S. Army Corps of Engineers,  
DOD.

**ACTION:** Notice of Open Meeting.

**Federal Register Citation of Previous  
Announcement, Federal Register Vol. 54,  
No. 93 / Tuesday, May 16,  
1989 / Notices, page 21094.**

The meeting will be held from 1:00  
p.m. to 5:00 p.m., Thursday, June 22,  
1989.

**Changes in the Meeting:** The meeting  
will commence at 1:00 PM on Thursday,  
June 22, 1989 and will end at 12:00 PM  
on Friday, June 23, 1989.

**Contact Person for More Information:**  
Dr. William L. Klesch, Chief, Office of  
Environmental Policy, Office of the  
Chief of Engineers, Washington, DC  
20314-1000, (202) 272-0166.

Kenneth L. Denton,

Department of the Army, Alternate Liaison  
Officer, With the Federal Register.

[FR Doc. 89-13880 Filed 6-9-89; 8:45 am]

BILLING CODE 3710-08-M



**Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Chignik Small Boat Harbor at Chignik, AK**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The recommended plan is to build a 1,460-foot breakwater within Anchorage Bay, and includes a 4.8-acre moorage basin, and access and entrance channels. The project area is in a sandy flat requiring 360,000 yd<sup>3</sup> of construction dredging and 16,000 yd<sup>3</sup> of maintenance dredging every 10 years. Project features include a 4.4 acre intertidal staging area and access road.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DSEIS can be answered by: Mr. William D. Lloyd at (907) 753-2640 or by writing to the: U.S. Army Corps of Engineers, Alaska District, Attn: CENPA-EN-PL-ER (LLOYD), P.O. Box 898, Anchorage, Alaska 99506-0898.

**SUPPLEMENTARY INFORMATION:**

**1. Proposed Action**

The recommended plan would consist of a 1,460-foot-long, rubblemound breakwater in Anchorage Bay protecting a 4.8-acre moorage basin and access and entrance channels. The project is in a sandy flat requiring 360,000 yd<sup>3</sup> of construction of dredging and 16,000 yd<sup>3</sup> of maintenance dredging every 10 years. The dredged material disposal site is in an upland site within the Chignik airport right-of-way. Project features include a 4.4-acre intertidal staging area and access road. The additional project feature presented in the DSEIS is the elimination of the designated quarry site in Castle Bay. The Alaska District Corps of Engineers will no longer designate quarry sites to be used in obtaining the armor stone for breakwaters. The Alaska District Corps of Engineers will evaluate the overall environmental impacts of existing, operating quarry sites using a typical, generic quarry site scenario.

**2. Reasonable Alternatives**

The alternative to the recommended plan is to construct a rubblemound breakwater less than a mile down the beach from the recommended harbor site. This plan would feature a rectangular basin and access channel, totaling 6.5 acres. A small staging area would be created between the harbor basin and the rocky beach. The rubblemound armor stone quantities are

higher at this site because of the deeper water. The plan requires dredging approximately 212,000 yd<sup>3</sup> of sand/gravel material. The same maintenance dredging and disposal features as the recommended plan are applicable to the alternative plan.

**3. Scoping Process**

a. *Public Involvement.* A public notice will be prepared and distributed to Federal, State and local interests to invite their participation and comments. Draft and Final Environmental Impact Statements were distributed for public review in 1987 and 1988 respectively.

b. *Significant Issues.* At present, the significant issue is the introduction of the Alaska District's new procedure of not designating a specific armor rock quarry in water resource projects. In particular, deleting the designation of the Castle Bay quarry site in the Chignik small boat harbor project. The construction contract will allow the contractor to select a quarry site to provide specific rock necessary for construction of the project. The National Environmental Policy Act documentation will describe recurring environmental impacts associated with quarry operations by describing a typical quarry operation, assessing impacts, and describing possible mitigation measures.

c. *Assignments.* Other than normal coordination, no cooperating agency assignments have been made.

d. *Environmental Review and Consultation Requirements.* The DSEIS will be circulated for review and all comments will be incorporated into the final supplemental environmental impact statement.

**4. Scoping Meeting**

A scoping meeting is not planned at the present time.

**5. Availability**

The DSEIS is expected to be available to the Public by August, 1989.

William W. Kakel,  
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-13881 Filed 6-9-89; 8:45 am]

BILLING CODE 370-NL-M

**DEPARTMENT OF EDUCATION**

**Proposed Information Collection Requests**

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before July 12, 1989.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732-3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.



Dated: June 6, 1989.

Carlos U. Rice,

Director, Office of Information Resources Management.

**Office of Bilingual Education and Minority Languages Affairs**

*Type of Review:* New.

*Title:* Study of Academic

Disadvantaged Students.

*Frequency:* On Occasion.

*Affected Public:* Individuals or households; State or local government.

*Reporting Burden:*

*Responses:* 28,617.

*Burden Hours:* 14,676.

*Recordkeeping Burden:*

*Recordkeepers:* 0.

*Burden Hours:* 0.

*Abstract:* This study will collect information on the effectiveness of the curriculum and instruction experienced by students in elementary schools with high concentrations of disadvantaged students. The study will identify policies and procedures at the school and district level associated with the presence of effective practices in classrooms and schools.

**Office of Educational Research and Improvement**

*Type of Review:* New.

*Title:* National Household Education Survey (NHES).

*Frequency:* One Time Only.

*Affected Public:* Individuals or households.

*Reporting Burden:*

*Responses:* 22,020.

*Burden Hours:* 2,790.

*Recordkeeping Burden:*

*Recordkeepers:* 0.

*Burden Hours:* 0.

*Abstract:* This information is needed to collect data on education issues. The field test is designed to evaluate the use of methodology for collecting data on such topics as high school dropouts and early childhood education.

**Office of Planning, Budget, and Evaluation**

*Type of Review:* New.

*Title:* Profile of Child Care Settings Study.

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

*Reporting Burden:*

*Responses:* 2,620.

*Burden Hours:* 1,492.

*Recordkeeping Burden:*

*Recordkeepers:* 0.

*Burden Hours:* 0.

*Abstract:* This study will provide national estimates of the level and

characteristics of the supply of child care and early education from center-based programs and regulated home based providers. The information collected will be used by federal policymakers and those outside the federal government concerned with the national supply of child care and early education.

[FR Doc. 89-13821 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

**Office of Elementary and Secondary Education**

**Intent To Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination**

**AGENCY:** Department of Education.

**ACTION:** Intent to award grantback funds.

**SUMMARY:** Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of Stockton Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

**DATE:** All written comments must be received on or before July 12, 1989.

**ADDRESS:** All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043), Washington, DC 20202-6132.

**FOR FURTHER INFORMATION CONTACT:** Dr. James Spillane. Telephone: (202) 732-4692.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Department has recovered \$406,679 from the California SEA in partial satisfaction of final audit determinations issued to the LEA by the SEA on September 12, 1986. These funds represent two of three annual payments the LEA has agreed to make to the SEA

to resolve the final audit determinations. The LEA's final payment of \$203,339 is due to the SEA no later than July 31, 1989.

The claims arose from an audit by the California State Controller's Office of the LEA's administration during fiscal years (FYs) 1981 and 1982 of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the LEA expended Title I funds for costs that were not necessary and reasonable for proper and efficient administration of the program, a violation of Appendix C to 34 CFR Part 74. Title I funds were improperly expended for fringe benefits at sites where there were no Title I staff, capital outlay for replacement of lost or stolen equipment that was insured, instructional materials that were not necessary or in excess of those needed for the Title I program, and contract services for which there was no documentation to substantiate the appropriateness of the expenditures.

**B. Authority for Awarding a Grantback**

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.



### C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of \$457,513, which is 75 percent of the total of the amount the Department has already recovered and the amount the Department will recover when the LEA makes its final payment to the SEA. The SEA has submitted a two-part plan on behalf of the LEA for the use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended. Although the final audit determinations resulted from improper expenditures of Title I funds, that program has been repealed. Chapter 1 is a successor program that, like Title I, is designed to serve educationally deprived children in low-income areas.

According to the plan, the LEA would use \$305,009, which is 75 percent of the funds recovered to date by the Department, to provide a remedial program for Chapter 1 students from June 26 to July 28, 1989. The objective of the program would be to improve Chapter 1 students' performance in reading and mathematics. Services would be provided at two sites to approximately 750 children in pre-kindergarten through grade 6 from 25 public schools and 5 nonpublic schools. Students in the program would receive 80 minutes of instruction in the language arts component and 80 minutes in the mathematics component on a daily basis. Activities would also be provided for the children to develop self-esteem, health and safety habits, and social skills.

Additionally, teachers and instructional aides would participate in weekly staff development sessions and in workshops for training in instructional techniques for working with Chapter 1 students. A team of curriculum writers would develop and demonstrate literature and mathematics materials to assist Chapter 1 teachers. Parents would also be provided training to assist them in helping their children. They would be invited to observe the program during its implementation and to an assembly at the conclusion of the session.

Under the plan, the LEA also proposes to use \$152,504, which is 75 percent of the amount yet to be recovered, to purchase computers and printers to augment the regular school year 1989-90 Chapter 1 program in public and nonpublic schools. The computers and printers would be placed in four public

schools that are ranked highest according to educational deprivation. Chapter 1 students in these schools would receive computer-assisted instruction for 20 minutes per day in reading and mathematics. Equitable services would be provided to eligible nonpublic school students in these four school attendance areas.

### D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

### E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. Specifically, the Secretary intends to make an initial payment of \$305,009, which is 75 percent of the funds recovered to date by the Department. An additional grantback payment of \$152,504 would be made if the SEA submits to the Department on a timely basis the balance of \$203,339 still to be repaid by the LEA.

### F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department all overdue debts, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: June 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-13819 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

### Intent To Repay to the Virginia State Department of Education Funds Recovered as a Result of Final Audit Determinations

**AGENCY:** Department of Education.

**ACTION:** Intent to award grantback funds.

**SUMMARY:** Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Virginia State Department of Education, the State Educational Agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education as a result of final audit determinations. This notice describes the SEA's plan, submitted on behalf of the Richmond City Public Schools, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

**DATE:** All Written comments must be received on or before July 12, 1989.



**ADDRESS:** All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132

**FOR FURTHER INFORMATION CONTACT:** Dr. James Spillane, Telephone: (202) 732-4694.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Department has recovered \$898,461.98, plus interest, from the Virginia SEA in satisfaction of claims arising from two Federal audits. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Based on findings in the first audit, which covered the period July 1, 1976 through June 30, 1979, the Department recovered \$317,435. Specifically, two LEAs—Richmond City Public Schools and Portsmouth City Public Schools—used Federal funds for activities that did not meet basic program requirements. Title I funds were expended for activities to meet the general needs of schools or of student bodies at large, instead of the special needs of educationally deprived students residing in eligible Title I project areas. This was in violation of 20 U.S.C. 241e(a)(1)(A) (1976) and 45 CFR 116a.21 and 116a.22 (1976), which required that LEAs identify specific educational needs for the target group of Title I children, develop a project to address those needs, and use Title I funds only in addressing those needs. The amounts of misspent funds in the Portsmouth and Richmond LEAs were \$234,477 and \$82,958.

Based on findings in the second audit, which covered fiscal years 1978 and 1979, the Department recovered \$581,026.98, plus interest. The Richmond LEA's program was not in compliance with Title I comparability requirements. Those requirements provided that an LEA could receive Title I funds only if it used its State and local funds in each Title I area to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas \* \* \* 20 U.S.C. 241e(a)(3)(C) (1976); 45 CFR § 116a.26 (1976).

Of the two LEAs cited in the audits, Richmond and Portsmouth, the amounts recovered on behalf of misspent Title I

funds in each were \$663,984.98 and \$234,477, respectively.

**B. Authority for Awarding a Grantback**

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) 1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

**C. Plan for Use of Funds Awarded Under a Grantback Arrangement**

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of \$497,988 and has submitted a plan on behalf of the Richmond LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1). 20 U.S.C. 2701*et seq.* The SEA's request did not include the Portsmouth LEA because a separate request already had been made for a grantback payment for the funds recovered for misexpenditures in that LEA.

Under the SEA's plan, the Richmond LEA would expend the grantback funds to provide a 1989 summer school program. Remedial reading and math instruction would be provided by 83 teachers and 78 teacher aides to approximately 1,250 Chapter 1 students in grades 1-7. The program would be operative for four hours per day for five weeks in three schools. Students in grades 1-5 would be placed in either a diagnostic and prescriptive reading

program or a visual literacy program based on individual needs. The remedial mathematics program would focus on problem solving, numeration/concepts, and geometry. Students in grades 6 and 7 would receive instruction in basic and advanced skills that is evenly divided between reading and mathematics with emphasis placed on the practical use of such skills. High achieving academically gifted students in the LEA would function as peer counselors for children participating in the summer school program.

Parents of the Chapter 1 children would be involved in the program. Parents would participate in computer literacy workshops, and provide tutorial assistance.

**D. The Secretary's Determinations**

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

**E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement**

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Virginia SEA under a grantback arrangement. The grantback award would be in the amount of \$497,988, which is 75 percent of the funds recovered by the Department as a result of the audit determinations relating to the Richmond LEA.

**F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made**

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:



(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: June 6, 1989.

Lauro F. Cavazos,  
Secretary of Education.

[FR Doc. 89-13820 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Assistant Secretary for International Affairs and Energy Emergencies

### Atomic Energy Agreement; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for supply of 0.192 grams of uranium-233, 0.018 grams of uranium enriched to 33 percent in the isotope uranium-235, and 16.892 grams of plutonium, for use as standard reference materials for safeguards purposes, by the IAEA, Vienna, Austria.

Contract Number WC-IA-136 has been assigned to the transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 7, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-13897 Filed 6-9-89; 8:45 am]

BILLING CODE 6450-01-M

### Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Additional Public Hearing Locations

AGENCY: U.S. Department of Energy.

ACTION: Addition of two locations for public hearings on the draft Supplement to the Environmental Impact Statement (SEIS) on WIPP and the extension of the public comment period.

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the Federal Register (Volume 54, Number 76, pp. 16350-2) announcing the availability of the Draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations, and procedures. Two additional public hearings on the SEIS are now scheduled to accommodate requests received by DOE. The first will be on June 22 at the Artesia Center, 812 North 8th Street, Artesia, New Mexico; the second on June 26 at the Odessa Holiday Inn Centre, 6201 East Highway 80, Odessa, Texas. Both will begin at 9:00 a.m. and will continue through the day and evening with recesses for meals.

Participation Procedures: To accommodate those interested, the public comment period for written comments has been extended 7 days. Comments should be mailed to the address below and postmarked by June 27, 1989. Persons wishing to preregister to make oral comments at the public hearings may call the DOE's WIPP SEIS Project Office at the phone number indicated below preferably one week prior to the hearing date. Commenters may also register at the door and will be accommodated as time allows.

ADDRESS: Written comments should be directed to: W. John Arthur III, Project

Manager, WIPP SEIS Project Office, U.S. Department of Energy, 6301 Indian School Road, NE., 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1-800-274-0585 and leave their name, phone number, and address with zip code.

### FOR FURTHER INFORMATION CONTACT:

W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P. O. Box 5400, Albuquerque, NM 87110 (505) 889-3038.

or

Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4600.

Dated in Washington, DC, this 7th day of June 1989, for the U.S. Department of Energy.

Geoffrey J. Judge,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-14069 Filed 6-9-89; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. TQ89-3-1-000]

### Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 6, 1989.

Take notice that on June 1, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

### Fifteenth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1989. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 625 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211



or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,  
Acting Secretary.

[FR Doc. 89-13860 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-32-000]

**Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment**

June 6, 1989.

On May 31, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"): Fortieth Revised Sheet No. 7; Fortieth Revised Sheet No. 8.

CIG requests that these proposed tariff sheets be made effective on July 1, 1989.

CIG states that this filing reflects no change in demand, and a 0.59¢ decrease in commodity rate for the G-1, P-1, SC-1, H-1, F-1, and PS-1 Rate Schedules, compared with rates filed by CIG on April 14, 1989 in Docket No. RP85-122, *et al.*, which rates were accepted by Commission Letter Order dated May 13, 1989, to become effective on May 1, 1989.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-13851 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-23-000]

**Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

June 6, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 1, 1989, the following proposed change to its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 6B. Such tariff sheet bears a proposed effective date of May 1, 1989.

ESNG states that such proposed change is being filed to revise the billing amounts shown on First Revised Sheet No. 6B to comply with the provisions of Ordering Paragraph (B) of the Commission's August 26, 1988 order in the subject docket. The referenced order requires ESNG to file revised billing amounts to "track" any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,  
Acting Secretary.

[FR Doc. 89-13861 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-2-000]

**East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions**

June 6, 1989.

Take notice that on May 31, 1989, East Tennessee Natural Gas Company (East Tennessee) is filing ten copies of Fiftieth Revised Sheet No. 4 to be effective July 1, 1989.

East Tennessee states that the purpose of the revisions to Fiftieth Revised Sheet No. 4 is to reflect a Purchased Gas Adjustment (PGA) to its Rates for the quarterly period of July 1989 through September 1989 pursuant to § 22.2 of the General Terms and Conditions of East Tennessee's Tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,  
Acting Secretary.

[FR Doc. 89-13862 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-201-008]

**East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions**

June 6, 1989.

Take notice that on May 31, 1989, East Tennessee Natural Gas Company (East Tennessee) filed Original Sheet No. 5A and Second Revised Sheet No. 144 to its FERC Gas Tariff to be effective July 1, 1989.

East Tennessee states that the purpose of this filing is to flow through the third demand surcharge



implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191 effective July 1, 1989. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff, which was accepted by order of the Commission on July 28, 1988. The purpose of Second Revised Sheet No. 144 is to conform with the issuance of Original Sheet No. 5A.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,  
Acting Secretary.

[FR Doc. 89-13863 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-187-000]

**Gas Research Institute; Annual Application and Procedural Schedule**

June 5, 1989

On June 1, 1989, Gas Research Institute (GRI) filed an application requesting advance approval of its 1990-1994 Five Year R&D Plan and 1990 R&D Program and the funding of its R&D activities for 1990 pursuant to the Natural Gas Act and the Commission's regulations, particularly 18 CFR 154.38(d)(5) (1989).

GRI's application seeks approval of its 1990 R&D Program and approval to collect \$170,421,000 through jurisdictional rates and charges during the twelve (12) months ending December 31, 1990 to support GRI's R&D activities in 1990. GRI states that its application was filed in accordance with the provision of 18 CFR 154.38(d)(5)(iii) that requires "RD&D organizations" to submit, annually, a five-year plan at

least 180 days prior to the commencement of the five-year period of the plan scheduled in this proceeding to commence on January 1, 1990.

GRI states that the proposed unit cost of GRI's 1990 R&D Program is 1.47 cents per Dth (i.e., 1.51 cents per Mcf), the same unit cost now in effect. GRI proposes that current tariffs pertaining to GRI funding be continued in effect through December 31, 1990. GRI also states that this proposed annual R&D Funding Unit will be applied to the services included in GRI's Program Funding Services in 1989 including jurisdictional, direct sale and intrastate volumes of GRI's members estimated to be 11,557.0 MDth. The Commission notes any unit cost approved by the Commission in this application will be assessed under the direct billing procedures provided in 381.107 of the Commission's regulations.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Public Reference Room.

The Commission's staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on July 31, 1989. Comments on the Staff Report, or other comments by all parties, except GRI, must be filed with the Commission on or before August 16, 1989. GRI's reply comments must be filed on or before August 30, 1989.

Any person desiring to be heard or to protest GRI's application must file, on or before June 26, 1989, with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure. All comments or protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make anyone a party to the proceeding.

Except for GRI members and state regulatory commissions, any person wishing to become a party to this proceeding or to participate as a party in any hearing that may be held in this proceeding must file a petition to intervene in accordance with the Commission's Rules of Practice and Procedure. GRI's members and the state regulatory commissions listed in the appendix to GRI's application are permitted to participate in this proceeding as intervenors and need not

file formal petitions to intervene or notices of intervention.

Lois Cashell,  
Secretary.

[FR Doc. 89-13850 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-7-51-001]

**Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions**

June 6, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on May 26, 1989 tendered for filing Substitute Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and Substitute Eighth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets were filed in compliance with the Commission's orders dated May 12, 1989 and May 16, 1989 in Docket Nos. TQ89-7-51-000 and TQ89-8-51-000, respectively. These tariff sheets revised the current adjustment rates reflected in Docket No. TQ89-7-51-000, effective May 1, 1989, to track the PGA adjustment rates accepted by the Commission in Docket No. TQ89-8-51-000, effective April 1, 1989. The referenced tariff sheets reflected no change in the cumulative adjustment rates from those accepted by the Commission in Docket No. TQ89-7-51-000.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.308 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective May 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this



filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13852 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-193-005]

#### Midwestern Gas Transmission Co.; Rate Filing

June 6, 1989.

Take notice that on May 31, 1989, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1989:

##### Seventeenth Revised Sheet No. 7

Midwestern state that revisions to Sheet No. 7 are authorized by Article XVII of its gas tariff.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13853 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-6-5-000]

#### Midwestern Gas Transmission Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1989

Take notice that on May 31, 1989, Midwestern Gas Transmission Company (Midwestern) filed Forty-Eighth Revised Sheet No. 5 to Original

Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Forty-Eighth Revised Sheet No. 5 consist of a \$(1953) per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, a \$(91) per dekatherm adjustment applicable to the Demand D-1 component, and a \$(0199) per dekatherm adjustment applicable to the Demand D-2 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in their proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13854 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-16-000]

#### National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1989.

Take notice that on June 1, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Sixth Revised Seventeenth Revised Sheet No. 4, proposed to become effective on July 1, 1989.

National states that the purpose of the proposed revised tariff sheet is to reflect the quarterly Purchased Gas Cost Adjustment ("PGA") required under the Commission's Regulations. The proposed tariff sheet results in a 19.39 cents per dekatherm (Dth) reduction in its commodity gas costs and a 44.0 cents

per Dth reduction in demand rates compared to those filed in its April 1989 quarterly PGA filing. The proposed quarterly PGA is said to result in a commodity sales rate under National's Rate Schedules RQ and CD equal to \$2.4680 per Dth.

National states that copies of this filing were posted in accordance with the Commission's Regulations and served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-13864 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-59-000]

#### Northern Natural Gas Co. Division of Enron Corp., Proposed Changes in FERC Gas Tariff

June 6, 1989

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on May 31, 1989, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of \$1.7841 per MMBtu to be effective July 1, 1989, through September 30, 1989. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.



Northern states that this filing establishes new D1 and D2 rates in compliance with the above referenced PGA Rulemaking, which required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new D1 rate component of \$.858 per MMBtu. The D2 rate component will remain unchanged at \$.0369 in this filing. These rates will be effective July 1, 1989, through September 30, 1989.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13855 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ99-4-38-000]

**Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff**

June 6, 1989.

Take notice that on May 31, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Fiftieth Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting its current quarterly adjustment to its annual purchased gas adjustment (PGA) filing pursuant to 18 CFR Sections 154.304 and 154.308.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.215,

385.211). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13856 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-019]

**Tennessee Gas Pipeline Co.; Filing of Tariff Sheets**

June 6, 1989.

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to its FERC Gas Tariff to be effective as indicated:

	Effective date
Second Revised Volume No. 1:	
Substitute Twelfth Revised Sheet No. 20.	Apr. 1, 1989.
Substitute Ninth Revised Sheet No. 20A.	Apr. 1, 1989.
Substitute Thirteenth Revised Sheet No. 21.	Mar. 1, 1989.
Substitute Fourteenth Revised Sheet No. 21.	Apr. 1, 1989.
Original Volume No. 2:	
Substitute Thirteenth Revised Sheet No. 5.	Apr. 1, 1989.
Substitute Twelfth Revised Sheet No. 6.	Apr. 1, 1989.

Tennessee states that it is filing these sheets in order to conform its tariff to the terms of the Interim Stipulation and Agreement dated March 9, 1989 in Docket Nos. RP88-228, *et al.* (Interim Stipulation) and approved by the Commission order dated May 24, 1989. Article I, Section 2 of the Interim Stipulation provides that for the Interim Period (February 1, 1989 to November 1, 1989), tariff sheets filed by Tennessee in Docket Nos. RP88-228 and RP89-29 shall not be effective. Tennessee states that the Interim Rates are the same as those rates filed by Tennessee on March 7, 1989 in Docket Nos. RP82-121, *et al.* to be effective January 1, 1989 as adjusted pursuant to Article I, Section 3 of the Interim Stipulation for the rate adjustment provisions of Tennessee's tariff including the Purchased Gas Adjustment provision. Therefore, the attached tariff sheets reflect Tennessee's rates effective January 1, 1989 as adjusted for the Interim

Adjustment to Tennessee's gas rates in Docket No. TF89-3-9 which was effective March 1, 1989 and the Quarterly Adjustment to Tennessee's gas rates in Docket No. TQ89-2-9 which was effective April 1, 1989.

In addition, Tennessee is withdrawing the following tariff sheets accepted by Commission letter order dated April 21, 1989 in Docket No. CP87-103 to be effective February 1, 1989.

*Second Revised Volume No. 1*

Second Revised Sheet No. 67  
Second Revised Sheet No. 68  
Second Revised Sheet No. 70  
Second Revised Sheet No. 73  
Second Revised Sheet No. 74  
First Revised Sheet No. 76A

Tennessee states that these sheets were filed to supersede sheets which became effective November 1, 1988 pursuant to Commission order dated December 30, 1988 in Docket No. CP87-103 and the April 21, 1989 letter order in the same proceeding. The tariff sheets to be withdrawn reflect changes only to conform those sheets to Tennessee's filings in Docket No. RP88-228 (*e.g.*, references to rate sheets). As indicated above, those filings are not effective for the Interim Period. Tennessee will refile these sheets after the end of the Interim Period.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-13865 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP88-191-010]

**Tennessee Gas Pipeline Co.; Filing**

June 6, 1989.

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Second Revised Sheet Nos. 40 through 44 to Second Revised Volume No. 1 of its FERC Gas Tariff. Tennessee states that the sheets set forth the Take-or-Pay Demand Rate Surcharge for each of Tennessee's Rate Schedule CD, G and GS customers to be effective July 1, 1989, based on 50 percent of the non-affiliate, non-recoupable take-or-pay and contract reformation costs paid by Tennessee on or before March 31, 1989 or which are known and measurable within 9 months of that date, including the amounts Tennessee has commenced recovery of pursuant to its June 10, 1988 and November 30, 1988 filings in this proceeding, and \$197,498,212 representing amounts incurred during the period December 1, 1988 through March 31, 1989 or known and measurable as of March 31, 1989. Additionally, the surcharge reflects carrying charges on costs incurred as of May 31, 1988 calculated at the FERC interest rate.

In accord with the terms of the protective order at Appendix D of the October 14, 1987 Stipulation and Agreement in Docket No. RP86-119, *et al.*, Tennessee is filing the Schedule 1 summary of payments in a sealed envelope which indicates that it is not to be placed in the Commission's public files. Tennessee has further indicated that it has provided a copy of Schedule 1 to each reviewing representative of each reviewing party that executed and delivered to Tennessee a certificate in the form provided in the protective order subsequent to Tennessee's March 31, 1989 filing in this proceeding. Tennessee is also submitting under separate cover to the Commission copies of each settlement agreement and summaries of each settlement applicable to costs incurred since March 31, 1989.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-13868 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-184-000]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

June 6, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, certain revised tariff sheets.

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover a portion of the take-or-pay charges billed to Texas Eastern by Southern Natural Gas Company (Southern) that are (1) to be paid by Southern to United Gas Pipe Line Company (United) attributable to United's Docket No. RP89-138 and (2) to be paid by Southern to United and to Sea Robin Pipeline Company (Sea Robin) attributable to Sea Robin's Docket No. RP89-141.

**(1) Relating to United Docket No. RP89-138**

Pursuant to the allocation methodology proposed by Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$691,640, exclusive of amortization interest, by means of a monthly charge of \$14,678, inclusive of amortization interest, for a period of 51 months effective June 1, 1989.

Sixth Revised Sheet Nos. 482 and 483 and Sixth Revised Sheet Nos. 64 through 67 are being revised to incorporate the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern by Southern attributable to United's Docket No. RP89-138. Sixth Revised Sheet Nos. 64 through 67 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern pursuant to United's Docket No. RP89-138 plus the previously authorized amounts attributable to

United's Docket Nos. RP88-27 and RP88-264.

**(2) Relating to Sea Robin Docket No. RP89-141**

Pursuant to the allocation methodology proposed by Southern to recover take-or-pay costs billed by Sea Robin to Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$2,250,739 by means of a monthly charge of \$55,307, inclusive of amortization interest, for a period of 60 months effective June 1, 1989. In order to recover Sea Robin's take-or-pay costs billed Southern by United, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$353,413 by means of a monthly charge of \$9,011, inclusive of amortization interest, for a period of 51 months effective June 1, 1989.

First Revised Sheet Nos. 483G and 483H and Eighth Revised Sheet Nos. 80 through 83 are being revised to incorporate the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern by Southern pursuant to Sea Robin's Docket No. RP89-141 flowed through to Southern by Sea Robin and United. Original Sheet Nos. 483G and 483H as filed by Texas Eastern on April 26, 1989 in Docket No. RP89-153 provide for the recovery of take-or-pay charges billed to Texas Eastern by United attributable to Sea Robin's Docket No. RP89-141. Eighth Revised Sheet Nos. 80 through 83 include the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern attributable to Sea Robin's Docket No. RP89-141.

If at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern states it will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in the above proceedings.

The proposed effective date of the above tariff sheets is June 1, 1989.

Texas Eastern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,



DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 89-13866 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-130-004]

**Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff**

June 6, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on May 31, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised volume No. 1, the following tariff sheet:

**63rd Revised Sheet No. 5**

On May 26, 1989, Transwestern filed to comply with Commission's order issued April 28, 1989, in Docket No. RP89-130-000 *et al.* to begin recovery of take-or-pay buyout and contract reformation costs (Transition Costs) for the period ending March 31, 1989.

Transwestern states that subsequent to the compliance filing of 5/26/89, it discovered that a pagination error occurred, wherein, 62nd Revised Sheet No. 5 should have been 63rd Revised Sheet No. 5. Therefore, this filing reflects only the change of pagination.

Transwestern requests waiver of any Commission Regulation such that 63rd Revised Sheet No. 5 become effective June 1, 1989 as originally proposed in the May 26, 1989 filing in Docket No. RP89-130-000 *et al.*

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-13857 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-000]

**Williams Natural Co.; Proposed Changes in FERC Gas Tariff**

June 6, 1989

Take notice that on May 31, 1989, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to Original Volume Nos. 1 and 2 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is July 1, 1989.

WNG states that the filing proposes a change in its currently effective sales, transportation and other rates which would result in an increase in annual revenues of approximately \$29.6 million, based on the test period (the twelve months ended February 28, 1989, adjusted for known changes through November 30, 1989). The Company states that the increased rates are required to reflect an overall rate of return of 15.67 percent, increases in expenses and a decline in sales volumes. Additionally, WNB proposes new contract Firm Storage Service (FSS) and interruptible Storage Service (ISS) Rate Schedules and rates and certain revisions to the General Terms and Conditions and rate schedules in its tariff.

WNG states that a public copy of its filing was served on each of its customers and affected state commissions pursuant to Section 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211, 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-13859 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-34-003]

**Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs**

June 6, 1989

Take notice that on May 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin) Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing and moved into effect certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that these tariff sheets, with supporting workpapers, are filed pursuant to the Commission's December 30, 1988 and May 26, 1989 Orders in Docket Nos. RP89-34-000, *et al.* In addition, these tariff sheets reflect the Company's Purchased Gas Adjustment (PGA) as filed in Docket No. TQ89-4-49-000.

Copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before 6/13/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 89-13858 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. TA89-1-49-000]

**Williston Basin Interstate Pipeline Co.; Annual Purchased Gas Adjustment Filing**

June 6, 1989.

Take notice that on June 1, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing its annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and section 21 of its FERC Gas Tariff (First Revised Volume No. 1), more specifically, Williston Basin filed the following revised tariff sheets:

*First Revised Volume No. 1*

Seventeenth Revised Sheet No. 10

*Original Volume No. 1-A*

Thirteenth Revised Sheet No. 11

Sixteenth Revised Sheet No. 12

Seventh Revised Sheet No. 97A

*Original Volume No. 1-B*

Sixth Revised Sheet No. 10

Sixth Revised Sheet No. 11

*Original Volume No. 2*

Nineteenth Revised Sheet No. 10

Eleventh Revised Sheet No. 11B

The proposed effective date of the tariff sheets is August 1, 1989.

Williston Basin requested that the Commission accept for filing Seventeenth Revised Sheet No. 10 (First Revised Volume No. 1) and Nineteenth Revised Sheet No. 10 (Original Volume No. 2) which effectuate a 48.343 cents per dkt increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1, and a negative 56.635 cents per dkt surcharge adjustment applicable to Rate Schedules G-1 and SGS-1. These changes result in an overall 8.292 cent per dkt decrease in the cumulative adjustment applicable to Rate Schedules G-1 and SGS-1, as compared to that contained in the Company's May 1, 1989 Out of Cycle PGA filing in Docket No. TQ89-4-49-000.

The balance of the tariff sheets submitted in the instant filing reflect a 1.077 cents per dkt increase in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's May 1, 1989 filing in Docket No. TQ89-4-49-000. Such increase in the fuel reimbursement charge is a result of the instant changes in Williston Basin's average cost of purchased gas.

Williston Basin states that on May 31, 1989 it filed with the Commission a

Motion to Make Suspended Tariff Sheets Effective and filed revised tariff sheets pursuant to the Commission's Orders of January 30, 1989 and May 26, 1989, in Docket Nos. RP89-34-000 *et al.* Williston Basin filed both primary and alternate tariff sheets in that filing requesting acceptance of the primary tariff sheets in anticipation of receipt of a Commission Order granting the necessary sales contract demand levels requested in Docket No. CP89-302-000, to be effective June 1, 1989.

Consistent with the May 31, 1989 filing in Docket Nos. RP89-34-000 *et al.*, Williston Basin also submitted primary and alternate tariff sheets in the instant PGA filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13867 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

**Office of Energy Research****Basic Energy Sciences Advisory Committee; Open Meeting**

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Basic Energy Sciences Advisory Committee (BESAC).

*Date and Time:* July 10, 1989—8:30 a.m.—5:00 p.m.; July 11, 1989—8:00 a.m.—3:00 p.m.

*Place:* Sandia National Laboratories, 1515 Eubank, S.E., Albuquerque, NM 87123, Building 882, Conference Room A.

*Contact:* Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545, Telephone: 301-353-3081.

*Purpose of the Committee:* To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

*Tentative Agenda:* Briefings and discussions of:

July 10, 1989

- Briefings on DOE Topics Related to BESAC
- Subcommittee Reports
- Public Comment (10 Minute Rule)

July 11, 1989

- Sandia Technical Presentations
- Discussion of BESAC Report
- Public Comment (10 Minute Rule)

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 6, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-13899 Filed 6-9-89; 8:45 am]

BILLING CODE 6450-01-M

**Office of Fossil Energy****Meeting: Invitation for Public Views and Comments on Improving the Economic Competitiveness and Increased Utilization of Western Fossil Energy Resources**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of meeting to invite public views and comments on the development of techniques which could offer the potential to improve the economic competitiveness and increased utilization of Western Fossil Energy Resources.

*Introduction*

The U.S. Department of Energy (DOE), Office of Fossil Energy (FE), is pursuing a National effort to develop technology for the improved utilization of domestic fossil energy resources, both Eastern and Western resources. The characteristics of Eastern and Western resources have distinct differences and require the structuring of a research and



development (R&D) effort that addresses issues specific to both sets of resources.

The FE pursues programs directed at identifying R&D opportunities and conducting R&D in extracting, processing, and utilizing domestic fossil fuel resources. The R&D in fossil fuel resources and technologies normally advances through several phases: basic sciences research, fundamental and exploratory research, process and engineering development, and demonstration and commercialization.

The R&D programs include work which is necessary to establish proof-of-concept, reduce technical and financial risk associated with deployment, and provide information for private-sector decisions regarding demonstration and commercialization decisions. The FE advanced research programs are focused on fundamental and exploratory research. As differentiated from process and engineering development, fundamental and exploratory research is oriented towards (1) exploring untried concepts that are unusual, novel, and highly innovative, and (2) developing ideas, understanding and theoretical knowledge that is broadly relevant to fossil energy technologies.

**Purpose of the Meeting:** The DOE recognizes that the R&D needs for Western fossil energy resources are determined by the effects of their unique properties and/or geologic and geographic locations. These factors are significant in the recovery, transportation, the technologies employed in their utilization or conversion, and environmental consequences. Therefore, in formulating its programs for the various fossil fuels, DOE would like to insure that consideration is given to important aspects of the Western fossil fuels. The DOE hopes to gather this information through interactive workshop discussions by groups of knowledgeable individuals with an interest in R&D or in the application of R&D results.

DOE plans to use the information gathered to formulate R&D plans for fossil energy. The intent of the meeting is to focus on R&D needs to advance the state-of-technology for the utilization of Western fossil fuel resources. Fossil fuels of interest include coal, oil, gas, oil shale and tar sands.

**Subjects of Particular Interest:** The subjects of particular interest are areas of R&D that are specifically applicable to Western fossil energy resources and include, but are not limited to: (a) Power

generation utilizing low rank coals; (b) development of coal-based fuels, including coal drying, cleaning and mild gasification; (c) improved techniques for extracting oil or gas; (d) oil shale extracting and processing.

The DOE is particularly interested in learning of any techniques for Western fossil energy resources that are not now commercially available but, if developed, offer the potential to improve the economic competitiveness and increased utilization of these resources.

**Meeting, Location, and Date:** There will be a public meeting at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207 (Telephone: 303-321-3333), at 8:30 a.m., on Wednesday, July 26, 1989.

**Format of the Meeting:** The meeting will commence with a brief plenary session that will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a brief recess, after which there will be concurrent Discussion Workshops led by panels of DOE officials. There will not be any formal presentations or statements in the Workshops. Attendees will be asked to engage in informal discussions with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by members of the audiences or by the panelists.

At the conclusions of the Workshops, attendees will meet in a closing plenary session. The discussions that ensued in the various Workshops, and the recommendations that resulted, will be reviewed and summarized.

The meetings are expected to adjourn in the late afternoon.

**Public Participation:** Individuals may attend the meetings without notification in advance to DOE, and there is no registration for or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. The DOE will not provide any meals or other refreshments at the meetings.

**Written Comments:** Written comments may be submitted by individuals who are not able to attend the public meeting. Written comments will be considered if they are received by June 30, 1989. Written comments should be submitted in triplicate (if possible) to the address noted below:

**Address for Comments:** All written comments should be submitted to: George Rudins, Associate Deputy

Assistant Secretary for Research and Development, Fossil Energy, FE-23, U.S. Department of Energy, Washington, DC 20545, (301) 353-3991.

Issued in Washington, DC, June 6, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-13898 Filed 6-9-89; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3600-8]

### Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

**AGENCY:** United States Environmental Protection Agency.

**ACTION:** Notice of final actions.

**SUMMARY:** The purpose of this notice is to announce that between October 1, 1988 and April 30, 1989, the United States Environmental Protection Agency (EPA), Region II Office, issued four final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued twelve final determinations, and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. This notice also announces one final determination that was made by the NYSDEC on July 18, 1988 that was omitted from Region II's last Federal Register notice on final PSD actions.

**DATES:** The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264-4711.

**SUPPLEMENTARY INFORMATION:** Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:



Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Long Island Lighting Co. <sup>1</sup>	West Babylon, NY	Construction of a 220 MW gas turbine generation facility.	NYSDEC	PSD permit approval.	7/18/88
Nassau District Energy Corp.	Uniondale, NY	Construction of a 57 MW cogeneration facility.	NYSDEC	do.	10/07/88
Kamine Carthage Cogeneration Co., Inc.	Carthage, NY	Construction of a 50 MW gas turbine/steam generator.	NYSDEC	do.	10/19/88
Morrill Press Co.	Fulton, NY	Construction of an 11 station rotogravure press and modification of an 8 station rotogravure press.	NYSDEC	do.	12/05/88
Kamine South Glens Falls Cogeneration Co., Inc.	South Glens Falls, NY	Construction of a 50 MW gas turbine/steam generator.	NYSDEC	do.	12/05/88
Indeck-Yerkes Energy Services, Inc.	Tonawanda, NY	Construction of a 53 MW gas turbine/steam generator.	NYSDEC	do.	1/09/89
Boise Cascade Corp.	Beaver Falls, NY	Replacement of an existing oil-fired boiler with a new oil-fired boiler.	NYSDEC	PSD non-applicability determination.	1/11/89
Hoffmann La Roche Inc.	Belvidere, NJ	Revision of the nitrogen oxide emission limit previously permitted for a 23.3 MW cogeneration system.	EPA region II	PSD permit revision.	1/17/89
Hercules, Inc.	Parlin, NJ	Revision of the particulate matter emission limit previously permitted for three coal-fired boilers.	EPA region II	do.	1/17/89
Long Island Lighting Co.	Shoreham, NY	Construction of a 220 MW gas turbine generation facility.	NYSDEC	PSD permit approval.	1/23/89
Life Savers, Inc.	Las Piedras, PR	Construction of a new steam boiler and a new generator and conversion of an existing generator and boiler to standby operation.	EPA region II	PSD non-applicability determination.	3/01/89
Abbott Laboratories.	Barceloneta, PR	Revision of the PM emission limit previously permitted for a 20.2 MW cogeneration facility.	EPA region II	PSD permit revision.	3/06/89
Megan-Racine, Associates, Inc.	Canton, NY	Construction of a 49 MW gas turbine/steam generator.	NYSDEC	PSD permit approval.	3/06/89
United Development Group-Niagara, Inc.	Niagara Falls, NY	Construction of a coal fired cogeneration system.	NYSDEC	do.	3/10/89
Town of North Hempstead Solid Waste Management Authority.	Port Washington, NY	Construction of a 990 tons per day municipal waste resources recovery facility.	NYSDEC	PSD applicability determination.	3/15/89
L&J Energy Systems, Inc.	Lowville, NY	Construction of a 49 MW gas turbine/steam generator.	NYSDEC	PSD permit approval.	3/20/89
Pennsauken Solid Waste Management Authority <sup>2</sup> .	Pennsauken, NJ	Construction of two 250 tons per day municipal solid waste incinerators.	NJDEP	do.	4/20/89

<sup>1</sup> On May 18, 1988, the Long Island Lighting Company (LILCO) was issued a PSD permit by the New York State Department of Environmental Conservation for a 220 Megawatt (MW) gas turbine cogeneration facility for its West Babylon plant. The permit was not considered effective and therefore was not included in EPA Region II's November 25, 1988 FEDERAL REGISTER notice on final PSD actions because adverse comments were received during the public comment period. However, all issues were resolved during an "issues conference" held by NYSDEC. Furthermore, the comments did not result in any change in the May 18, 1988 permit. Therefore, LILCO's PSD permit for the West Babylon plant is considered effective as of July 18, 1988.

<sup>2</sup> The Pennsauken Solid Waste Management Authority (PSWMA) was issued a PSD permit on February 10, 1989 by the New Jersey Department of Environmental Protection. This permit would have become effective on March 13, 1989 if no petition for administrative review was filed with the EPA Administrator in Washington, DC. However, a petition for review was filed by the Township of Cinnaminson, the Borough of Palmyra, and the Borough of Riverton on March 7, 1989. On April 20, 1989, the EPA Administrator decided, after careful review of the appeal, not to grant further review of the petition. Therefore, the PSWMA PSD permit is effective as of April 20, 1989.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

#### EPA Actions

United States Environmental Protection Agency, Region II Office, Permits Administration Branch—Room 505, 28 Federal Plaza, New York, New York 10278.

#### NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001.

#### NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East

State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: June 1, 1989.

William J. Muszynski,  
Acting Regional Administrator.

[FR Doc. 89-13849 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66138; FRL-3600-4]

#### Order Canceling Registration for Pesticide Products Containing Bromoxynil Butyrate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation notice and order.

**SUMMARY:** This notice announces EPA's decision to cancel all registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing the butyric acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzonitrile). The registrant Rhone-Poulenc AG Company has requested voluntary cancellation of these products. Because of the developmental risks associated with exposure to these products, EPA will not permit and the cancellation order will explicitly prohibit the sale, distribution, and use of existing stocks of affected products.



**DATE:** The cancellation order incorporated in this notice will become effective June 13, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Jude Andreasen, Special Review/  
Reregistration Division (H7508C),  
Office of Pesticide Programs,  
Environmental Protection Agency, 401  
M Street SW., Washington, DC 20460  
Office location and telephone number:  
Rm. 1006F, CM #2, 1921 Jefferson  
Davis Highway, Arlington, VA, (703)  
557-1170.

**SUPPLEMENTARY INFORMATION:**

**I. Request for Voluntary Cancellation**

On May 1, 1989, as a result of discussion between EPA and Rhone-Poulenc AG Company concerning measures to minimize potential risk of developmental toxicity associated with exposure to bromoxynil, Rhone-Poulenc requested voluntary cancellation of its registered pesticide products containing bromoxynil butyrate (the butyric acid ester of 3,5-dibromo-4-hydroxybenzonitrile). Rhone-Poulenc stated in its request that it would institute a plan to recover remaining stocks of these products from distributors, dealers, and users. Under this plan, Rhone-Poulenc will replace these products with an equal quantity of a corresponding product containing bromoxynil octanoate, and will pay shipping and handling costs. Distributors and dealers holding stocks of affected products should contact Rhone-Poulenc customer service. Users holding stocks of affected products should return them to the dealer.

Rhone-Poulenc had previously requested voluntary cancellation of a number of registered bromoxynil products, including some but not all of its products containing bromoxynil butyrate, on October 27, 1988. EPA canceled certain bromoxynil products pursuant to this request, but was unwilling to accept the remaining requests for voluntary cancellation because those requests were made contingent on the Agency's permission to sell and use existing stocks of affected products. Given the unresolved concerns regarding the developmental toxicity of bromoxynil, EPA considered it inappropriate to issue an existing stocks order for such products.

**II. Existing Stocks**

In its May 1, 1989 letter, Rhone-Poulenc did not request that EPA permit the sale, distribution, or use of existing stocks of canceled products containing bromoxynil butyrate. EPA has determined that continued use of products containing bromoxynil

butyrate would present an unacceptable risk of developmental toxicity in persons handling such products. Accordingly, EPA will not permit the continued sale, distribution, or use of any canceled product containing bromoxynil butyrate. EPA encourages all persons holding stocks of canceled products containing bromoxynil butyrate to participate in the recovery program established by Rhone-Poulenc.

**III. Cancellation Order**

Effective June 13, 1989, the registrations for all pesticide products containing the butyric acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) are canceled pursuant to section 6(f)(1) of FIFRA, 7 U.S.C. 136d(f)(1). Effective June 13, 1989, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell, or to use for any pesticidal purpose, any of the following canceled products containing the butyric acid ester of bromoxynil:

EPA registration No.	Previous registration No.	Product
264-339	.....	Dragonmate.
264-340	.....	ME 4 Brominal.
264-340	.....	Torch Twin Pak
264-340	.....	3+3 Brominal
264-394	.....	Bromoxynil Butyrate
264,421	.....	Technical
264,474	359-716	Certrol
		Buctril 4 EC.

This Order does not prohibit any shipments of canceled products containing the butyric acid ester of bromoxynil which are associated with the program to recover stocks of such products established by Rhone-Poulenc AG Company, or which are otherwise necessary to facilitate proper storage or disposal of such products.

Dated: June 5, 1989.

**Douglas D. Camp,**

Director, Office of Pesticide Programs.

[FR Doc. 89-13848 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL MARITIME COMMISSION**

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street,

NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-010676-037.

*Title:* South Europe/U.S.A. Freight Conference ("Conference").

*Parties:*

Achille Lauro  
Compania Trasatlantica Espanola, S.A.  
Costa Container Line (a Division of Contship Containerlines Limited)  
d'Amico Societa di Navigazione, S.p.A.  
Evergreen Marine Corporation (Taiwan) Ltd.  
Farrell Lines, Inc.  
"Italia" di Navigazione S.p.A.  
Jogolinija  
Jugooceanija  
Lykes Lines (Lykes Bros. Steamship Co., Ltd.)  
A.P. Moller-Maersk Line  
Nedlloyd Lines (Nedlloyd Lijnen B.V.)  
Sea-Land Service, Inc.  
P & O Containers (TFL) Ltd.  
Zim Israel Navigation Company, Ltd.

*Synopsis:* The proposed modification would permit any member to disassociate itself from any Conference action on a rate or service item that would result in a reduction in the overall cost per cargo unit to the shipper by giving written notice to the other members prior to the time the rate or service item has been filed with the FMC and become effective.

*Agreement No.:* 217-010738-003.

*Title:* Barber Blue Sea/Open Bulk Carriers Chartering Agreement.

*Parties:*

Wilhelmsen Lines A/S  
Open Bulk Carriers Limited

*Synopsis:* The proposed modification would authorize the parties to discuss and agree upon rates, charges and other competitive matters regarding intermodal movements. It would also permit the parties to agree upon sailing schedules, service frequency, and ports to be served by each party. It would further make other non-substantive administrative changes.

*Agreement No.:* 232-011184-002.

*Title:* Evergreen Marine Corporation (Taiwan) Ltd. Italia di Navigazione SpA



and Contship Containerlines Ltd./Costa Container Lines SpA Space Charter and Sailing Agreement in the Mediterranean—U.S. Trades.

**Parties:**

Evergreen Marine Corporation  
(Taiwan) Ltd.  
Contship Containerlines Ltd./Costa Lines S.p.A.  
Italia di Navigazione, S.p.A.

**Synopsis:** The proposed modification would add Compagnie Generale Maritime as a party to the Agreement and would change the name of the Agreement to reflect the change in membership.

**Agreement No.:** 202-011231-002.

**Title:** United States Gulf/Venezuela Freight Association.

**Parties:**

American Transport Lines, Inc.  
Companhia Anonima Venezolana de Navegacion  
Maritima Aragua, S.A.

**Synopsis:** The proposed amendment would modify the Alternate Port Service provision of the Agreement.

By Order of the Federal Maritime Commission.

Dated: June 6, 1989.

Joseph C. Polking,  
Secretary.

[FR Doc. 89-13805 Filed 6-9-89; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Northwest Acquisition Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1989.

**A. Federal Reserve Bank of Chicago**  
(David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northwest Acquisition Corp.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Financial Corp., Chicago, Illinois, and thereby indirectly acquire The National Security Bank of Chicago, Chicago, Illinois.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Bancorp of Ponca City, Inc.*, Ponca City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Ponca City, Oklahoma.

2. *Mountain Parks Financial Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bank of Evergreen, Evergreen, Colorado.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 89-13823 Filed 6-9-89; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Reelfoot Bank Employee Stock Ownership Plan

The notificants listed below have applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 1989.

**A. Federal Reserve Bank of St. Louis**  
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reelfoot Bank Employee Stock Ownership Plan*, Union City, Tennessee; to acquire 20.92 percent of the voting shares of Reelfoot Bancshares, Inc., Union City, Tennessee, and thereby indirectly acquire Reelfoot Bank, Union City, Tennessee.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Farmers State Bank of Fort Morgan Employees Stock Ownership Plan*, Fort Morgan, Colorado; to acquire an additional 9.12 percent of the voting shares of The Farmers State Bank of Fort Morgan, Fort Morgan, Colorado, for a total of 24.9 percent.

2. *Richard E. Martin, Pryor*, Oklahoma; to acquire an additional 1.4 percent of the voting shares of CNBO Bancorp, Inc., Pryor, Oklahoma, for a total of 18.44 percent, and thereby indirectly acquire Century National Bank of Oklahoma, Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 89-13824 Filed 6-9-89; 8:45 am]

BILLING CODE 6210-01-M

### Society Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,



decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1989.

**A. Federal Reserve Bank of Cleveland**  
(John J. Wixted, Jr., Vice President) 1455  
East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, *Society Capital Corporation*, Cleveland, Ohio, in making, acquiring, or servicing subordinated loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13825 Filed 6-9-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Program Announcement for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration announces the acceptance of applications for Fiscal Year 1990 for Grants for Area Health Education Centers Special Initiatives under the authority of Section 781(a)(2) of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988, Pub. L. 100-607, Title VI.

Section 781(a)(2) authorizes Federal Assistance to medical and osteopathic schools which have previously received Federal financial assistance for the Area Health Education Centers (AHEC) program under either section 802 of Pub. L. 94-484 in 1979 or under section 781. In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project aid on behalf of an Area Health

Education Center that is no longer federally-funded as part of that program.

Section 781(a)(2) applications will be for the purpose of improving the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program to provide effective health services in health manpower shortage areas.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations set forth in 42 CFR Part 57, Subpart MM.

#### Review Criteria

The review of applications will take into consideration the following criteria:

- (1) The relative merit of the proposed project; and
- (2) The relative cost-efficiency of the proposed project.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

#### Funding Preferences for Fiscal Year 1990

In making awards for Fiscal Year 1990, the following funding preferences will be used:

- (1) Competing continuation applications under section 781(a)(1);
- (2) New applications for planning and development projects under section 781(a)(1);

(3) New applications for Special Initiatives projects under Section 781(a)(2); and

(4) Supplements to existing awards, section 781(a)(1) and 781(a)(2).

#### Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications a funding priority will be given to the following:

(1) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(2) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

(3) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in Fiscal Year 1989 and the Administration is extending these priorities for Fiscal Year 1990.

Requests for application materials and questions regarding grants policy should be addressed to: Grants Management Officer (U-76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6950.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The deadline date for receipt of applications is July 20, 1989. Applications shall be considered as meeting the deadline if they are either:

- (1) Received on or before the deadline date, or
- (2) Postmarked on or before the deadline and received in time for submission to the independent review



group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 16, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-13834 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-15-M

### Program Announcement for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, Professions Reauthorization Act of 1988, (Title VI), Pub. L. 100-607.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

### Review Criteria

The review of applications will take into consideration the following criteria:

- (1) The degree to which the proposed project provides for the project requirements;
- (2) The administrative and management ability of the applicant to carry out the proposed project in cost-effective manner; and
- (3) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

(1) Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

(2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

(3) Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The following funding priorities and special consideration were established in Fiscal Year 1989 and the Administration is extending these priorities in Fiscal Year 1990.

### Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to:

(1) Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic, and American Indian/Alaskan Native minority trainees).

(2) Application proposing to develop faculty competence for teaching ambulatory and inpatient case management of those with HIV infection related diseases.

(3) Applications proposing to develop faculty competence for teaching quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(4) Applications designed to develop faculty competence for teaching geriatrics content and/or develop educational materials for teaching geriatric content to medical students, residents and practitioners.

### Special Consideration

Special consideration will be given to applications demonstrating a commitment to family medicine.

Pub. L. 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The deadline date for receipt of applications is September 18, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Applications, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Should additional programmatic information be required please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-16, Rockville, Maryland 20857, Telephone: (301) 443-3614.



This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 12, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-13833 Filed 6-9-89; 8:45am]

BILLING CODE 4160-15-M

### Program Announcement and Proposed Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Pub. L. (100-607, Title VI). Comments are invited on the proposed additional funding priority stated below.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support both the program and the trainees.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

#### Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

2. The degree to which the proposed project adequately provides for the project requirements;

3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

In determining the order of funding of approved applications, a funding priority will be given to:

Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population. This priority was established in Fiscal Year 1989 and the Administration is extending it for Fiscal Year 1990.

#### Special Consideration

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

#### Additional Funding Priority for Fiscal Year 1990

It is proposed to give an additional funding priority to:

Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees).

These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Their representation should be increased to ensure equitable opportunities to a

career in medicine and equal access to health care services. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, this funding priority is designed to increase the number of underrepresented minority physicians.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 12, 1989, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final additional funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Pub. L. 100-607, section 633(a), requires that for grants authorized under sections 780, 784, 785 and 786 for Fiscal



Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The deadline date for receipt of applications is July 24, 1989. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to applicant.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 10, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-13835 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-15-M

### Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1989:

**Name:** National Advisory Council on the National Health Service Corps.

**Date and Time:** June 25-28, 1989, 7:00 p.m.-9:00 p.m.

**Place:** Mayflower Park Hotel, 405 Olive Way, Seattle, Washington 98101. The meeting is open to the public.

**Purpose:** The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

**Agenda:** The agenda will include a Bureau and Division update; Panel discussions on residency match, residency programs, and NHSC/IHS Advocates Programs. Site visit to the

Country Doctor Community Center and the Sea Mar Center leaving at 8:30 a.m. on Tuesday, June 27. No transportation will be available to the public. At 1:30 p.m., the meeting will continue at the Mayflower Park Hotel.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda Items are subject to change as priorities dictate.

Date: June 6, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-13832 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-15-M

### Office of Human Development Services

#### Agency Information Collection Under OMB Review

**AGENCY:** Office of Human Development Services.

**ACTION:** Notice.

Under the provisions of the Paperwork Reduction Act (4 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval for Program Narrative Statement, Form SF-424, Application for Grant Under Title VI, Part A, Older Americans Act, Grants to Indian Tribes for Supportive and Nutrition Services. **ADDRESSES:** Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested extension should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

#### Information on Extension Document

**Title:** Program Narrative Statement, Form SF-424, application for Grant Under Title VI, Part A, Older Americans Act, Grants to Indian Tribes for Supportive and Nutrition Services.

**OMB No.:** 0980-0161.

**Description:** Indian Tribes must file applications with the Administration on Aging, showing eligibility, to obtain

grants under Title VI, Part A, Grants to Indian Tribes for Supportive and Nutrition Services.

**Annual Number of Respondents:** 181.

**Annual Frequency:** 1.

**Average Burden Hours Per Response:** 10.67.

**Total Burden Hours:** 1,931.

Dated: June 5, 1989.

Mary Sheila Gall,

Assistant Secretary, for Human Development Services.

[FR Doc. 89-13804 Filed 6-9-89; 8:45 am]

BILLING CODE 4130-01-M

### Public Health Service

#### National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92-463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on June 27, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on June 27 are draft technical reports of long-term studies on six chemicals, listed alphabetically, along with supporting information including proposed levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats (except the studies on allyl glycidyl ether which used Osborne Mendel rats) and B6C3F<sub>1</sub> mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on two chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Persons wanting to make a *formal* presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than June 20, 1989 and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and



staff and made available at the meeting for attendees. Oral presentation should supplement and not just repeat the written statement. Presentations should be about 5 minutes, and must be limited to no more than 10 minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as

possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park, (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G.

Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971); FTS (629-3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: March 16, 1989.

David P. Rall,

Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JUNE 27, 1989

Chemical CAS Number	Staff Scientist/Technical Report Number	Use	Route/Exposure Levels	Laboratory	Proposed Levels of Evidence of Carcinogenicity <sup>1</sup> Organ/Tissue (Neoplasm) <sup>2</sup>	Order of Review
Allyl glycidyl ether, 106-82-3.	Dr. G. Boorman, 919-541-3440; TR-376, 06/27/89.	Stabilizer of chlorinated compounds, vinyl resins, rubber, resin intermediate.	Inhalation: R and M: 0.5, 10 ppm.	Battelle North-west Laboratory.	MR: Equivocal evidence—nasal cavity: adenoma 0/44 0/46 1/43 or adenocarcinoma 0/44 0/46 1/43 combined 0/44 0/46 2/43; squamous cell carcinoma 0/44 0/46 1/43. FR: No evidence MM: Some evidence—nasal cavity: adenoma 0/50 0/50 3/50 FM: Equivocal evidence—nasal cavity: adenoma 0/49 0/49 1/50 MR: No evidence FR: No evidence MM: Some evidence—forestomach: squamous cell papilloma 1/50 2/50 5/50 FM: Some evidence—forestomach: squamous cell papilloma 0/50 5/50 6/50	3
Benzaldehyde, 100-52-7	Dr. J. Bishop, 919-541-1876; TR-378, 06/27/89.	Synthetic and naturally occurring substance used in the synthesis of flavorings and fragrances.	Oral, Gavage (corn oil): R and MM: 0, 200, 400, FM: 0, 300, 600 mg/kg.	Southern Research Institute.	MR: No evidence FR: No evidence MM: Some evidence—forestomach: squamous cell papilloma 1/50 2/50 5/50 FM: Some evidence—forestomach: squamous cell papilloma 0/50 5/50 6/50	6
D-carvone, 2244-16-8	Dr. P. Chan, 919-541-7561; TR-381, 06/27/89.	Oil of caraway; flavoring agent for food and beverages; fragrance in perfumery and soaps. Naturally occurring.	Oral, Gavage (corn oil): M: 0, 375, 750 mg/kg.	International Research and Development Corp.	MM: No evidence FM: No evidence	5



TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JUNE 27, 1989—Continued

Chemical CAS Number	Staff Scientist/Technical Report Number	Use	Route/Exposure Levels	Laboratory	Proposed Levels of Evidence of Carcinogenicity <sup>1</sup> Organ/Tissue (Neoplasm) <sup>2</sup>	Order of Review
3,3'-dimethoxybenzidine dihydrochloride, 20325-40-0.	Dr. D. Morgan, 919-541-2264; TR-372, 06/27/89.	Production of dyes .....	Oral with water (water): R: 0,80,170, 330 ppm.	Hazleton (Vienna).	MR: Clear evidence—skin (neoplasms) liver: neoplastic nodule 0/60 3/45 7/74 6/60; neoplastic nodule or carcinoma 1/60 1/45 0/74 2/60 combined 1/60 4/45 7/74 8/60; large intestine: adenomatous polyp 0/60 1/45 4/75 5/60 or adenocarcinoma 0/60 0/45 4/75 3/60 combined 0/60 1/45 8/75 8/60; small intestine: adenocarcinoma 0/60 4/45 7/75 5/60; oral cavity: squamous cell papilloma 1/60 7/45 10/75 9/60; squamous cell papilloma or squamous cell carcinoma 0/60 1/45 0/75 2/60 combined 1/60 8/45 10/75 11/60; zymbal gland: adenoma 0/59 4/45 11/75 9/60; carcinoma 0/59 7/45 14/75 21/60 preputial gland: adenoma 14/60 6/43 19/73 12/59 or carcinoma 2/60 6/43 15/73 19/59; combined 16/60 12/43 33/73 29/59; multiple sites: mesothelioma 2/60 1/45 7/75 9/60; may have been related: brain: astrocytoma 0/60 2/44 3/75 1/60. FR: Clear evidence—zymbal gland: adenoma 0/60 3/45 4/75 3/60 or carcinoma 1/60 10/45 17/75 13/60 combined 1/60 12/45 21/75 16/60; clitoral gland: adenoma 5/58 15/44 13/74 16/55; carcinoma 2/58 17/44 41/74 30/55; mammary gland: adenocarcinoma 1/60 2/45 14/75 20/60; may have been related: skin: squamous cell papilloma 0/60 0/45 3/75 0/60; oral cavity: squamous cell papilloma 2/60 2/45 3/75 3/60 or squamous cell carcinoma 0/60 0/45 3/75 2/60 combined 2/60 2/45 6/75 5/60; large intestine: adenomatous polyp 0/60 0/45 1/75 2/60 or adenocarcinoma 0/60 1/45 0/75 1/60 combined 0/60 1/45 1/75 3/60; liver: neoplastic nodule 0/60 1/44 0/75 2/60 or carcinoma 0/60 0/44 0/75 1/60 combined 0/60 1/44 0/75 3/60; uterus/cervix: adenoma 0/60 3/45 1/75 2/59 or carcinoma 0/60 4/45 2/75 2/59	
glycidol, 558-52-5.....	Dr. R. Irwin, 919-541-3340; TR-374, 06/27/89.	Intermediate for pharmaceuticals and cosmetics; stabilizer for natural oils and vinyl polymers.	Oral, Gavage (water): R: 0,38,75, M: 0,25,50 mg/kg.	Papanicolaou Research Institute.	MR: Clear evidence—peritoneum: mesothelioma 3/50 34/50 39/50; mammary gland: fibroadenoma 3/50 8/50 7/50; brain: glioma 0/50 5/50 6/50; forestomach: squamous cell papilloma 0/50 1/50 5/50 or squamous cell carcinoma 1/50 1/50 2/50 combined 1/50 2/50 6/50; intestines: adenomatous polyp 0/50 0/50 1/50 or adenocarcinoma 0/50 1/50 3/50 combined 0/50 1/50 4/50; skin: sebaceous gland adenoma 0/50 0/50 1/50, basal cell carcinoma 0/50 4/50 2/50, or sebaceous gland adenocarcinoma 0/50 0/50 1/50 combined 0/50 5/50 4/50; zymbal gland: carcinoma 1/50 3/50 6/50 thyroid gland: follicular celladenoma 0/50 2/50 2/50 or follicular cell carcinoma 1/50 2/50 5/50 combined 1/50 4/50 6/50.	



TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JUNE 27, 1989—Continued

Chemical CAS Number	Staff Scientist/Technical Report Number	Use	Route/Exposure Levels	Laboratory	Proposed Levels of Evidence of Carcinogenicity <sup>1</sup> Organ/Tissue (Neoplasm) <sup>2</sup>	Order of Review
					<p>FR: Clear evidence—mammary gland: fibroadenoma 14/50 32/50 29/50; adenocarcinoma 1/50 11/50 16/50; brain: glioma 0/50 4/50 4/50; oral cavity: squamous cell papilloma 1/50 3/50 6/50 or squamous cell carcinoma 0/50 0/50 1/50 combined 1/50 3/50 7/50; forestomach: squamous cell papilloma 0/50 4/50 8/50 or squamous cell carcinoma 0/50 0/50 3/50 combined 0/50 4/50 11/50; glandular stomach: fibrosarcoma 0/50 0/50 2/50; clitoral gland: adenoma 3/50 7/50 7/50, adenocarcinoma 0/50 1/50 0/50, or carcinoma 2/50 1/50 5/50 combined 5/50 9/50 12/50; thyroid gland: follicular cell adenoma 0/50 1/50 0/50 or follicular cell carcinoma 0/50 0/50 3/50 combined 0/50 1/50 3/50; hematopoietic system: leukemia 13/50 14/50 20/50</p> <p>MM: Clear evidence—harderian gland: adenoma 7/50 10/50 16/50 or adenocarcinoma 1/50 2/50 7/50 combined 8/50 12/50 22/50; forestomach: squamous cell papilloma 0/50 2/50 9/50 or squamous cell carcinoma 1/50 0/50 1/50 combined 1/50 2/50 10/50; urinary bladder: carcinoma 0/50 1/50 1/50; skin: squamous cell papilloma 0/50 0/50 4/50; liver: adenoma 18/50 16/50 30/50 or carcinoma 10/50 17/50 8/50 combined 24/50 31/50 .35/50; lung: alveolar/bronchiolar adenoma 6/50 6/50 8/50 or alveolar/bronchiolar carcinoma 7/50 5/50 14/50 combined 13/50 11/50 21/50; epididymis: sarcoma 0/50 0/50 2/50</p> <p>FM: Clear evidence—harderian gland: adenoma 4/50 10/50 16/50 or adenocarcinoma 0/50 1/50 1/50 combined 4/50 11/50 17/50; mammary gland: adenoma 0/50 1/50 0/50, fibroadenoma 1/50 0/50 0/50, or adenocarcinoma 1/50 5/50 15/50 combined 2/50 6/50 15/60; uterus: carcinoma 0/50 0/50 1/50 or adenocarcinoma 0/50 3/50 2/50 combined 0/50 3/50 3/50; subcutaneous tissue: sarcoma 0/50 1/50 6/50 or fibrosarcoma 0/50 2/50 3/50 combined 0/50 3/50 9/50; skin: squamous cell papilloma 0/50 0/50 1/50 or squamous cell carcinoma 0/50 0/50 1/50 combined 0/50 0/50 1/50</p> <p>MR: No evidence ..... FR: No evidence MM: No evidence FM: No evidence</p>	2
Succinic anhydride, 108-30-5.	Dr. R. Melnick, 919-541-4142; TR-373, 06/27/89.	Dehydrator and acidulant in foods; intermediate for adhesives, dyes, and elastomers.	Oral, Gavage (corn oil): R:0,50/100 MM: 0,38,75, FM: 0, 75,150 mg/kg.	Microbiological Associates.		1



<sup>1</sup> Levels of Evidence Summary: (20 individual experiments): clear evidence, 6; some evidence, 3; equivocal evidence, 2; no evidence, 9, inadequate study, 0.

<sup>2</sup> Regarding tumor types, the format used is explained by the following example: liver (adenoma, carcinoma) means that both benign and malignant types of neoplasms were increased and influenced the level of evidence; liver (adenoma or carcinoma) indicates that both types of neoplasia were combined to make the evaluation and to assign a level of evidence.

NOTE: The results indicated are to be considered tentative until reviewed, discussed, and approved at the Board of Scientific Counselors Peer Review Panel Public Meeting June 27, 1989.

MR=Male Rats; FR=Female Rats; MM=Male Mice; FM=Female Mice

TABLE 2.—SUMMARY DATA FOR NTP TECHNICAL REPORTS OF TOXICITY STUDIES PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS PEER REVIEW PANEL MEETING ON JUNE 27, 1989

Chemical CAS Number	Staff scientist/technical report number	Use	Route/Exposure levels	Laboratory	Proposed toxicity findings	Order of review
Cobalt sulfate heptahydrate, 10026-24-1.	Dr. J. Bucher, 919-541-4532; TOX-05, 06/27/89.	Drying agent for varnishes and inks; component of electroplating solutions.	Inhalation: R&M: 0, R&M: 0, .3, 1.0, 3.0, 10.0, 30.0 mg/M3.	Battelle Northwest Laboratory.		7
1,2-dichloroethane, 107-06-2.	Dr. D. Morgan, 919-541-2264; TOX-04, 06/27/89.	Production of vinyl chloride and other chlorinated chemicals; lead scavenger; solvent, fumigant.	Oral, Gavage (corn oil): MR: 0, 30, 60, 120, 245, 490; FR: 0, 20, 40, 75, 150, 300 mg/kg; Oral with water (water): R&M: 0, 500, 1000, 2000, 4000, 80000 ppm.	EG&G Mason Research Institute.		8

[FR Doc. 89-12254 Filed 6-9-89; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-09-4111-15; WYW105855]

#### Proposed Reinstatement of Terminated Oil and Gas Lease

June 2, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW105855 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16% percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW105855 effective February 1, 1989, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Andrew L. Tarshis,  
Chief, Leasing Section.

[FR Doc. 89-13870 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-22-M

[U-54912]

#### Notice of Realty Action; Exchange of Public and Private Lands in Box Elder County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976*, (43 U.S.C. 1716):

T. 12N., R. 9W., SLM  
Section 15: W½E½, W½  
Section 22: NW¼, NW¼NE½  
Containing 680.00 acres

In exchange for these lands, the United States will acquire the following described lands from Levell Neal:

T. 10N., R. 13W., SLM  
Section 11: All  
Section 13: All (except a strip of land 400 feet wide owned by S.P. Transportation Company)  
Containing 1237.025 acres

The purpose of the exchange is to acquire the non-federal lands which have high public historical values due to the abandoned Transcontinental Railroad crossing on one of the offered

sections. The exchange also benefits the United States by allowing the disposal of an area with difficult management problems as identified in the Box Elder Resource Management Plan.

The terms and conditions applicable to the exchange are:

A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

A reservation by the United States of all minerals in Section 22 of T. 12N., R. 9W., SLM. The mineral estate of Section 15, T. 12N., R. 9W., SLM, has been previously reserved and is held by third party.

The publication of this notice in the Federal Register will segregate the public lands described above for a period of 2 years from the date of first publication to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

The surface estate only will be acquired by the United States on the offered lands.

Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at



the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

*Salt Lake District Manager.*

[FR Doc. 89-13828 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-DQ-M

## Bureau of Reclamation

### Notice of Realty Action; Competitive Sale of Public Land; Arizona

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Correction.

A Notice of Realty Action was published on May 8, 1989, pertaining to sale of surplus Bureau of Reclamation property at public auction to be held on July 12, 1989. The notice appeared on pages 19614 and 19615 and indicated that should the parcel of land remain unsold at the close of the scheduled auction, it could be purchased over the counter on a first come-first serve basis until September 12, 1989. It is hereby corrected that, should the parcel remain unsold at close of the scheduled auction on July 12, 1989, the property may be reoffered for sale at another public auction on a date to be determined by the Bureau of Reclamation. The property will not be available for purchase over the counter if unsold at the auction, as published on May 8, 1989.

William E. Rinne,

*Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.*

[FR Doc. 89-13841 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-09-M

## National Park Service

### Mississippi National River and Recreation Area; Boundary Description

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of boundaries.

This notice sets forth the boundary description and map of the Mississippi National River and Recreation Area as required in Pub. L. 100-696, authorized November 18, 1988, 102 Stat. 4600.

### Legal Description of the River Corridor

#### Ramsey

Commencing at the point where the west boundary line of Anoka County intersects with the north boundary line of Hennepin County;

Thence north along said Anoka County west boundary line to the NW corner of the NW quarter of the SW quarter of Section 19 (T 32 N, R 25 W);

Thence east along the north side of the NW quarter of the SW quarter of Section 19 (T 32 N, R 25 W), to its intersection with the center line of U.S. Highway 10;

Thence along said center line in a southeasterly direction to the intersection with the north side of Section 30 (T 32 N, R 25 W);

Thence eastward along the north side of Section 30 to the NW corner of Section 29 (T 32 N, R 25 W);

Thence south along the west side of Section 29 to the SW corner of the NW quarter of said Section 29;

Thence east along the south side of the NW quarter of said Section 29 to the NW corner of the NE quarter of the SW quarter of the SW quarter of said Section 29;

Thence south along the west side of the NE quarter of the SW quarter of said Section 29 to SW corner of the NE quarter of the SW quarter of said Section 29;

Thence east along the north line of the southeast quarter of southwest quarter of said Section 29; to the west boundary line of Section 28 (T 32 N, R 25 W);

Thence east along the northern boundary of Government Lot 1, Section 28 (T 32 N, R 25 W) to the NE corner of said lot;

Thence south to the SE corner of said Government Lot 1, Section 28 (T 32 N, R 25 W);

Thence east along the north side of Section 33 (T 32 N, R 25 W) to the NE corner of Government Lot 2 in said Section;

Thence south along the east side of Government Lot 2, Section 33 (T 32 N, R 25 W) to the SW corner of the northern half of the NE quarter of the NE quarter of Section 33;

Thence east to the west side of Section 34 (T 32 N, R 25 W);

Thence south to the SW corner of the NW quarter of the SW quarter of the NW quarter of Section 34 (T 32 N, R 25 W);

Thence south along the west side of Section 35 (T 32 N, R 25 W) to the NW corner of Government Lot 1, Section 35 (T 32 N, R 25 W);

Thence east to the NW corner of the SW quarter of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W);

Thence south to the SW corner of the SW quarter of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W);

Thence east along the south side of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W) to its intersection with the west boundary of Anoka;

Thence northeasterly along the west boundary of Anoka to the intersection with the center line of U.S. Highway 10.

#### Anoka

Thence southeasterly along said center line to the intersection with the center line of Park Street in the City of Anoka; south along the center line of Park Street to the intersection with the west side of Section 1 (T 31 N, R 25 W);

Thence south along said west side to the intersection with the center line of Benton Street;

Thence southeasterly along said center line to the intersection with the center line of State Avenue;

Thence south along the center line of State Avenue to the intersection with the center line of Rice Street;

Thence east along the center line of said street to the intersection with the center line of Ferry Street;

Thence easterly along a line from said intersection to the intersection of the center lines of Madison Street and River Avenue;

Thence east from said point along the center line of Madison Street to the intersection with the center line of 1st Avenue;

Thence south along 1st Avenue to the intersection with the center line of Jefferson Street;

Thence east along the center line of said street to the intersection with the center line of 2nd Avenue;

Thence south along said center line to the intersection with the center line of Adams Street;

Thence east along said center line to the intersection with the center line of 3rd Avenue;

Thence south along said center line to the intersection with the center line of Oakwood Drive;

Thence easterly along said center line to the intersection with the center line of Kings Lane;

Thence southwesterly along said center line to the intersection with the center line of Birch Street;

Thence southeasterly along said center line to the intersection with the center line of Queens Avenue;

Thence south along said center line to the intersection with the center line of Pine Street;

Thence southeasterly along said center line to the intersection with the center line of 9th Avenue;

#### Coon Rapids

Thence from this point, a straight line to the intersection of the center line of 115th Avenue with the west side of Section 17 (T 31 N, R 24 W);

From this point, east along a line to the intersection of the east side of the NW quarter of said Section 17 with the center line of Coon Rapids Boulevard;



From said point southeasterly along the center line of Coon Rapids Boulevard to the intersection with the center line of Mississippi Boulevard;

Thence southerly along said center line to the intersection with the center line of Hansen Boulevard;

Thence south along said center line to the intersection with the center line of 99th Avenue NW;

Thence east along said center line to the SW corner of the NW quarter of the NW quarter of Section 26 (T 31 N, R 24 W);

Thence east along the south side of the north half of the NW quarter of said Section 26;

Thence continuing east along the south side of the NW quarter of the NE quarter of said Section 26 to the intersection with the center line of East River Boulevard (Anoka County Highway 1);

Thence south along said center line to the intersection with the west side of the east half of the SE quarter of said Section 26;

Thence south along said line to the SW corner of the SE quarter of the SE quarter of said Section 26;

Thence continuing south along the west side of the east half of the NE quarter of Section 35 (T 31 N, R 24 W);

Thence continuing south along the west side of the NE quarter of the SE quarter of said Section 35 to the SW corner of the NE quarter of the SE quarter of said Section 35;

From this point, southeasterly along a diagonal to the NW corner of Section 3 (T 30 N, R 24 W);

From said corner, east along the north side of said Section 3 to the intersection with the center line of Anoka County Trunk Highway 1;

#### *Fridley*

#### *Minneapolis*

Thence south along said center line of said highway to the Anoka-Hennepin County common boundary line;

Thence continuing south along the center line of now Hennepin County Trunk Highway 23 to the center line of 30th Avenue NE;

Thence east along said center line to the intersection with the center line of Randolph Street;

Thence south along said center line to the intersection with the center line of 26th Avenue NE;

Thence east along said center line to the intersection with the center line of Grand Street;

Thence south along said center line to the intersection with the center line of 13th Avenue NE;

Thence southwesterly along said center line to the intersection with the center line of Ramsey Street;

Thence southeasterly along said center line to the intersection with the center line of 7th Avenue NE;

Thence northeasterly along said center line to the intersection with the center line of Main Street;

Thence southeasterly along said center line to the intersection with the center line of 5th Avenue NE;

Thence northeasterly along said center line to the intersection with the center line of University Avenue;

Thence southeasterly along said center line to the intersection with the center line of Oak Street;

Thence south along said center line to the intersection with the center line of Fulton Street;

Thence east along said center line to the intersection with the center line of Huron Street;

Thence southerly along said center line to the intersection with the center line of Interstate 94;

Thence southeasterly along said center line to the intersection with the Minneapolis-St. Paul common boundary line;

#### *St. Paul*

Thence south along said line to the intersection with the center line of Otis Avenue;

Thence southeasterly along Otis Avenue to the intersection with the center line of Exeter Place;

Thence south along said center line to the intersection with the center line of Mississippi River Boulevard;

Thence east along said center line to the intersection with the center line of Cretin Avenue;

Thence south along said center line to the intersection with the center line of Goodrich Avenue;

Thence west along said center line to the intersection with the center line of Woodlawn Avenue;

Thence south along said center line to the intersection with the center lines of Randolph Avenue, Woodlawn Avenue and Mount Curve Boulevard;

Thence south along the center line of Mount Curve Boulevard to the intersection with the center line of Ford Parkway;

From this point southeasterly along a diagonal to the intersection of the center lines of Hampshire Avenue and Finn Street;

Thence south along the center line of Finn Street to the intersection with the center line of Magoffin Avenue;

Thence east along said center line to the intersection with the center line of Cleveland Avenue;

Thence south along said center line to the intersection with the center line of Norfolk Avenue;

Thence southeasterly and easterly along said center line to the intersection of the center line of Stewart Avenue;

Thence northeasterly along said center line to the intersection with the center line of Alton Street;

Thence southeasterly along said center line to the intersection with the center line of Youngman Avenue;

Thence northeasterly along said center line to the intersection with the center line of Rankin Street;

Thence northwesterly along said center line to the intersection with the center line of Stewart Avenue;

Thence northeasterly along said center line to the intersection with the center line of Homer Avenue;

Thence northwesterly along said center line to the intersection with the south boundary line of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railroad;

Thence northeasterly along said boundary to the intersection with the center line of Watson Avenue;

Thence east along said center line to the intersection with the center line of Drake Street;

From this point, northeasterly along a diagonal to the intersection of the center lines of Randolph Avenue and Erie Street;

Thence north along the center line of Erie Street to the intersection with the center line of Jefferson Avenue;

Thence east along said center line to the intersection with the center line of Colburne Avenue;

From this point, northeasterly along a diagonal to the intersection of the center lines of St. Clair Avenue and Western Avenue;

Thence east along the center line of St. Clair Avenue to the intersection with the center line of Ann Street;

Thence north along said center line to the intersection with the center line of Superior Street;

Thence east along said center line to the intersection with center line of Dousman Street;

Thence north along said center line to the intersection with the center line of Banfil Avenue;

Thence east along said center line to the intersection with the center line of Smith Street;

Thence north along said center line to the intersection with the center line of Goodrich Avenue;

Thence east along said center line to the intersection with the center line of Leech Street;



Thence north along said center line to the intersection with the center line of McBoal Street;

Thence east along said center line to the intersection with the center line of Wilkin Street;

Thence north along said center line to the intersection with the center line of Exchange Street;

Thence northeasterly along said center line to the intersection with the center line of Kellogg Boulevard;

Thence easterly and northeasterly along said center line to the intersection with the center line of Interstate 94;

Thence southeasterly along center line to the intersection with the center line of Maria Avenue;

Thence southeasterly along said center line to the intersection with the south side of Section 33 (T 20 N, R 22 W);

Thence east along the south center line of said Section 33 to the center line of Burns Avenue;

Thence east along said center line to the intersection with the center line of Upper Afton Road;

Thence southeasterly along said center line to the intersection with the center line of Hazel Avenue;

Thence south along said center line to the intersection with the north side of Section 11 (T 28 N, R 22 W);

Thence east along said side to the NE corner of the NW quarter of said Section 11;

Thence south along the east side of the NW quarter of said Section 11 to the SE corner of the NW quarter of said Section 11;

Thence east along the north side of the SE quarter of said Section 11 to the NW corner of the east half of the SE quarter of said Section 11;

Thence south along the west side of the east half of the SE quarter of said Section 11 to the south line of said Section 11;

Thence east along the south side of said Section 11 to the intersection with the center line of McKnight Road;

Thence east along said center line to the intersection with the center line of Carver Avenue;

#### *Maplewood*

Thence east along said center line to the intersection with the west side of the east half of the NW quarter of Section 24 (T 28 N, R 22 W);

Thence south along said side continuing along the west side of the east half of the SW quarter of said Section 24, to the intersection with the center line of Interstate 494;

Thence southwesterly along said center line to the intersection with the centerline of 1st Avenue in Newport;

#### *Newport*

Thence south along said center line to the intersection with the center line of 17th Street;

Thence east along said center line to the intersection with the center line of 3rd Avenue;

Thence south along said center line to the intersection with the center line of 12th Street West;

Thence east along said center line to the intersection with the center line of 4th Avenue;

Thence south along said center line to the intersection with the south side of the north half of Section 1 (T 27 N, R 22 W);

#### *St. Paul Park*

Thence east along said side to the center line of Third Street, City of St. Paul Park;

Thence south along said center line to the intersection of 6th avenue (commonly known as Broadway);

Thence west along said center line to the intersection of the center line of Main Street;

Thence south along said center line to the intersection of the center line of Pullman Avenue;

Thence east along said center line to the intersection with the center line of 3rd Street;

Thence south along said center line to the South city limits of St. Paul Park;

#### *Grey Cloud*

Thence south along said center line to the intersection with the center line of Grey Cloud Trail;

Thence southeasterly along said center line to the intersection with the south side of Section 19 (T 27 N, R 21 W);

#### *Cottage Grove*

Thence east along said side to the SE corner of said Section 19;

Thence south along the west side of Section 29 (T 27 N, R 21 W) to the intersection with the NW corner of the SW quarter of the NW quarter of said Section 29;

Thence east along the north side of the SW quarter of the NW quarter of said Section 29 to the NE corner of the SW quarter of the NW quarter of said Section 29;

Thence south along the east side of the SW quarter of the NW quarter and along the east side of the NW quarter of the SW quarter of said Section 29 to the NW corner of the SE quarter of the SW quarter of said Section 29;

Thence east along the north side of the SE quarter of the SW quarter of said Section 29 to the NE corner of the SE

quarter of the SW quarter of said Section 29;

Thence south along the east side of the SW quarter of said Section 29 to the south side of said Section 29;

Thence east along the south side of Sections 29 and 28 to the southwestern corner of Section 27;

Thence north along the west side of said Section 27 to the NW corner of the SW quarter of said Section 27;

Thence east along the north side of the south half of said Section 27 to the east side of said Section 27;

Thence south along the east side of said Section 27 to the SE corner of said Section;

Thence east along the south side of Section 26 (T 27 N, R 21 W), to the intersection with the center line of U.S. Highway 61;

#### *Denmark*

Thence southeasterly along said center line to the intersection with the center line of U.S. Highway 10;

Thence easterly along said center line to the intersection with the south side of Section 6 (T 26 N, R 20 W);

Thence east to the SE corner of said Section 6;

Thence southeasterly along a diagonal to the SE corner of the north half of the NW quarter of Section 8 (T 26 N, R 20 W);

Thence east along the south side of the north half of the NE quarter of said Section 8 to the east side of said Section 8;

Thence south along the east side of Section 8 to the intersection with the northeasterly boundary of Dakota County;

#### *Ravenna*

Thence southeasterly along the Dakota County boundary to the intersection with the Dakota County-Goodhue County common boundary;

Thence south along said boundary to the intersection with the south side of Section 21 (T 114 N, R 16 W);

Thence west along the south side of said Section to the SW corner of said Section;

Thence north along the west side of said Section to the NW corner of said Section;

Thence north along the west side of Section 16 (T 114 N, R 16 W) to the intersection with the center line of Dakota CSAH 54;

Thence northwesterly along said center line to the intersection with the south side of Section 31 (T 115 N, R 16 W);

Thence west along said line to the SW corner of said Section 31;



Thence north along the east side of Section 36 (T 115 N, R 17 W) to the NE corner of the SE quarter of the SE quarter of said Section 36;

Thence west along the south side of the NE quarter of the SE quarter of said Section 36 to the SW corner of the NE quarter of the SE quarter of said Section 36;

Thence north along the west side of the east half of the SE quarter of said Section 36 to the NW corner of the NE quarter of the SE quarter of said Section 36;

Thence west along the north side of the south half of said Section 36 and Section 35 (T 115 N, R 16 W) to the west side of said Section 35;

#### *Hastings*

Thence north along the west side of said Section 35 and Section 26 (T 115 N, R 16 W) to the intersection with the center line of 3rd Street;

Thence west along said center line to the intersection with the center line of Washington Street;

Thence north along said center line to the intersection with the center line of 2nd Street;

Thence west along said center line to the intersection with the center line of Dakota County Road 42;

#### *Nininger*

Thence northwesterly along said center line to the intersection with the center line of Dakota County Highway 87;

Thence northwesterly along said center line to the intersection with the center line of 125th Street east;

Thence west along said center line to the intersection with the center line of Isadore Avenue;

Thence south along said center line to the intersection with the center line of 127th Street east;

Thence west along said center line to the intersection with the center line of Idell Avenue;

Thence south along said center line to the intersection with the center line of Dakota County Road 42;

Thence southwesterly along said center line to the intersection with the center line of Minnesota Highway 55;

#### *Rosemount/Inver Grove Heights*

Thence west and then north along said center line to the intersection with the center line of Dakota County Road 77;

Thence north along said center line to the intersection with the center line of Minnesota State Highway 56;

Thence north along said center line to the intersection with the center line of 70th Street east;

Thence west along said center line to the intersection with the center line of Delany Avenue east;

Thence north along said center line to the intersection with the center line of 69th Street east;

Thence west along said center line to the east side of Section 3 (T 27 N, R 18 W);

Thence north along said side to the NE corner of said Section 3;

Thence west along the north side of said section 3 to the intersection with the center line of Henry Avenue;

#### *South St. Paul*

Thence north along said center line to the intersection with the center line of Chestnut Street;

Thence east along said center line to a point directly in line with the southerly extension of Eldridge Avenue;

From this point, northwesterly along a diagonal to the intersection of the center lines of Spruce Street and Eldridge Avenue;

Thence north along said center line of Eldridge Avenue to the intersection with the center line of Dale Street;

Thence west along said center line to the intersection with the center line of Syndicate Avenue;

Thence north along said center line to the intersection with the center line of Warburton Street;

From this point, northwesterly, along a diagonal to the intersection of the center line of 8th Street South and 1st Avenue South;

Thence north along said center line of 1st Avenue South to the intersection with the center line of Southview Boulevard;

Thence west along said center line to the intersection with the center line of 2nd Avenue South;

Thence north along said center line to the intersection with the center line of Marie Avenue;

Thence west along said center line to the intersection with the center line of 3rd Avenue North;

Thence north along said center line to the intersection with the center line of 2nd Street North;

Thence west along said center line to the intersection with the center line of 4th Avenue North;

Thence north along said center line to the intersection with the center line of 3rd Street North and Grand Avenue;

Thence north along said center line of Grand Avenue to the intersection with the center line of 5th Avenue North;

From this point northwesterly along a diagonal to the intersection of the center line of Turin and Steward Avenues;

Thence north along said center line of Steward Avenue to the intersection of

the center lines of 8th Avenue North and Thompson Avenue;

From this point northwesterly along a diagonal to the intersection of the center line of Highland Avenue and 10th Avenue North;

From this point, northwesterly along a diagonal to the intersection of the center line of Bryant and Summit Avenues;

Thence north along said center line of Summit Avenue to the intersection with the center line of Orme Avenue;

From this point northwesterly along a diagonal to the intersection of the center line of Butler and Stickney Avenues;

From this point northwesterly along a diagonal to the intersection of the center lines of Stanley and Evans Avenues;

Thence north along the center line of Evans Avenue to the intersection of the Center lines of Stickney Avenue and Lewis Street;

Thence north along said center line of Stickney Avenue to the intersection with the St. Paul-South St. Paul common boundary;

#### *St. Paul*

Thence west along said boundary to the intersection with the center line of new State Highway 56;

Thence north along said center line to the intersection with the center line of East Page Street;

Thence west along said center line to the intersection with the center line of Woodbury Street;

Thence north along said center line to the intersection with the center line of Prescott Street;

Thence west along said center line to the intersection with the center line of Oakdale Avenue;

Thence north along said center line to the intersection with the center line of East King Street;

Thence west along said center line to the intersection with the center line of Robert Street;

Thence north along said center line to the intersection with the center line of George Street;

Thence west along said center line to the intersection with the center line of Humboldt Avenue;

Thence north along said center line to the intersection with the center line of Winifred Street;

Thence west along said center line to the intersection with the center line of Hall Street;

Thence north along said center line to the intersection with the center line of Delos Street;



Thence west along said center line to the intersection with the center line of Bidwell Street;

Thence south along said center line to the intersection with the center line of W. Congress Street;

Thence west along said center line to the intersection with the center line of Ohio Street;

Thence south along said center line to the intersection with the center line of Robie Street;

Thence west along said center line to the intersection with the center line of Manomin Avenue;

Thence south along said center line to the intersection with the center line of West George Street;

Thence west along said center line to the intersection with the center line of Smith Avenue;

Thence south along said center line to the intersection with the center line of West Stevens Street;

Thence west along said center line to the intersection with the center line of Ottawa Avenue;

Thence south along said center line to the intersection with the center line of Morton Street;

Thence west along said center line to the intersection with the center line of Delaware Avenue;

Thence south along said center line to the intersection with the center line of State Highway 13;

#### *Mendota Heights*

Thence west and southwesterly along said center line to the intersection with the center line of Sylvandale Road;

Thence south along said center line to the intersection with the center line of Woodridge Drive;

Thence southwesterly along said center line to the intersection with the center line of Cascade Lane;

Thence south along said center line to the intersection with the center line of Arcadia Drive;

From this point southwesterly along a diagonal to the northwest corner of Section 24 (T 28 N, R 22 W);

Thence west along the north side of Section 23 (T 28 N, R 22 W), to the intersection with the center line of Northern States Power Company utility easement;

Thence south along said center line to the intersection with the south side of the north half of the NE quarter of said Section 23;

From this point, southwesterly along a diagonal to the intersection of the center line of Victoria Road and Caren Road;

Thence westerly along the center line of Caren Road to the intersection with the center line of James Road;

Thence southwesterly along said center line to the intersection with the center line of Douglas Road;

Thence westerly along said center line to the intersection with the center line of James Road;

Thence westerly along said center line to the intersection with the center line of Lexington Avenue;

Thence south along said center line to the intersection with the center line of Orchard Place;

Thence westerly along said center line to the intersection with the center line of Hunter Lane;

Thence south along said center line to the intersection with the center line of State Highway 110;

Thence west along said center line to the intersection with the center line of Minnesota Highway 13;

Thence southerly along said center line to the intersection with the center line of Interstate 494;

Thence westerly along said center line to the intersection with the center line of State Highway 5;

Thence northeasterly along said center line to the intersection with the boundary line of the Fort Snelling State Park;

Thence northerly along said boundary line to the intersection with the center line of State Highway 55;

#### *Minneapolis*

Thence northwesterly along said center line to the intersection with the center line of 47th Avenue South;

Thence north along said center line to the intersection with the center line of Minnehaha Avenue;

Thence northwesterly along said center line to the intersection with the center line of Nawadaha Boulevard;

Thence easterly along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of E. 46th Street;

Thence east along said center line to the intersection with the center line of 47th Avenue South;

Thence north along the center line of 47th Avenue South to the intersection with the center line of East 44th Street;

From this point north along a straight line to the intersection of the center lines of Dowling Street and 47th Avenue South;

Thence north along the center line of 47th Avenue South to the intersection with the center line of East 32½ Street;

Thence west along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of East 35th Street;

Thence east along said center line to the intersection with the center line of 47th Avenue South;

Thence north along said center line to the intersection with the center line of East Lake Street;

Thence west along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of Dorman Avenue;

Thence northwesterly along said center line to the intersection with the center line of 40th Avenue South;

Thence in a straight line northwest to the intersection of the center lines of Minneapolis Avenue and 34th Avenue South;

Thence northwest along the center line of Minneapolis Avenue to the intersection with the center line of 31st Avenue South;

Thence north along said center line to the intersection with the center line of Franklin Avenue;

Thence west along said center line to the intersection with the center line of Riverside Avenue;

Thence northwest along said center line to the intersection with the center line of 19th Avenue South;

Thence north along said center line to the intersection with the center line of 2nd Street South;

Thence northwest along the center line of 2nd Street South to the intersection of the center lines of 2nd Street South and Hennepin Avenue;

Thence north-northwest along the center line of 2nd Street North to the intersection with the center line of Mississippi Drive;

Thence north-northeast along said center line to the intersection with the center line of Lyndale Avenue North;

Thence north along said center line to the intersection with the center line of Interstate 94;

Thence north along said center line to the intersection with the center line of 52nd Avenue North;

Thence west along said center line to the intersection with the center line of 4th Street North;

Thence northwesterly along said center line to the intersection with the center line of 55th Avenue North;

#### *Brooklyn Center*

Thence westerly along said center line to the intersection with the center line of Camden Avenue North;



Thence north along said center line to the intersection with the center line of 62nd Avenue North;

Thence in a straight line northeasterly to the intersection of the center lines of State Highway 169 and Interstate 94;

#### *Brooklyn Park*

Thence north along the center line of State Highway 169 to the intersection with the center line of 89th Avenue North;

Thence west along said center line to the west side of Section 13 (T 31 N, R 24 W);

Thence north along said side of said Section 13 to the NW corner of said Section 13;

From this point west along the south side of Section 11 (T 31 N, R 24 W) to the SW corner of the SE quarter of the SE quarter of said Section 11;

Thence north to the NW corner of the SE quarter of the SE quarter of said Section 11;

Thence in a straight line northwest to the intersection of the center lines of Logan Avenue North and 95th Avenue North;

Thence northeast along the center line of Logan Avenue North to the intersection with the center line of 96th Avenue North;

Thence northwest along said center line to the intersection with the center line of Newton Avenue North;

Thence north along said center line to the intersection with the center line of 97th Avenue North;

Thence west along said center line to the SE corner of the NW quarter of said Section 11;

Thence north along the east side of the NW quarter of said Section 11 to the intersection with the center line of State Highway 169;

Thence northwest along said center line to the north side of the south half of the SW quarter of Section 2 (T 31 N, R 24 W);

Thence west along the said side to the west side of said Section 2;

Thence north-northwest in a straight line to the intersection of the center lines of Riverside Place and Sunset Road;

Thence northwest along the center line of Riverside Place to the intersection with the center line of France Avenue North;

Thence north-northeast along said center line to the intersection with the center line of U.S. Highway 169;

#### *Champlin*

Thence northwest along said center line to the intersection with the center line of Hayden Lake Road;

Thence west along said center line to the intersection with the center line of U.S. Highway 52;

Thence north along said center line to the intersection with the center line of U.S. Highway 169;

Thence northwest along said center line to the intersection with the center line of Hennepin County Road 12;

Thence northwest along said center line to the intersection with the east side of Section 14 (T 120 N, R 22 W);

#### *Dayton*

Thence north along said side of Section 14 to the SE corner of the NE quarter of the NE quarter of Section 14 (T 120 N, R 22 W);

Thence west along the south side of the NE quarter of the NE quarter of Section 14 to the SW corner of the NE quarter of the NE quarter of Section 14 (T 120 N, R 22 W);

Thence north along the west side of the NE quarter of the NE quarter of Section 14 to the south side of Section 11 (T 120 N, R 22 W);

Thence west along the south side of Section 11 (T 120 N, R 22 W) to the SW corner of the SE quarter of said Section;

Thence north along the west side of the SE quarter of Section 11 to the NW corner of the SW quarter of the SE quarter of Section 11 (T 120 N, R 22 W);

Thence west along the north side of the south quarter of Section 11 to the intersection with the east side of Section 10 (T 120 N, R 22 W);

Thence south along the west side of Section 11 to the SW corner of the N one-half of the NW quarter of the SW quarter of the SW quarter of Section 11 (T 120 N, R 22 W);

Thence west across Government Lot 6 to the east boundary of Government Lot 5, Section 10 (T 120 N, R 22 W);

Thence south along the east boundary of Government Lot 5 to the NE corner of the south 20 acres of Government Lot 5 (T 120 N, R 22 W);

Thence west to the SW corner of the NE quarter of the SE quarter of the SW quarter of Section 10 (T 120 N, R 22 W);

Thence north to the south side of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence west to the SW corner of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence north along the west side of Government Lot 4 to the NW corner of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence west to the east side of Section 9 (T 120 N, R 22 W);

Thence north along the east side of Section 9 to the SE corner of Government Lot 1, Section 9 (T 120 N, R 22 W);

Thence west along the south side of Government Lot 1 to the SW corner of Government Lot 1 within Section 9 (T 120 N, R 22 W);

Thence north along the west side of Government Lot 1 in Section 9 to the north side of Section 9 (T 120 N, R 22 W);

Thence west along the north side of Section 9 to the NE corner of the NE quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence south along the east side of the NE quarter of the NW quarter to the SE corner of the NE quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence west along the south side of the north quarter of Section 9 to the SW corner of the NW quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence north along the east side of Section 8 (T 120 N, R 22 W) to the SE corner of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence west along the south side of the northern half of the NE quarter of the NE quarter in Section 8 to the SW corner of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence north along the west side of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W) to the south side of Section 5 (T 120 N, R 22 W);

Thence west to the SW corner of Government Lot 4 in Section 5;

Thence north along the west side of Government Lot 4 to the SE corner of Government Lot 3, Section 5 (T 120 N, R 22 W);

Thence west along the north side of the south quarter of Section 5 to the SW corner of the NW quarter of the SW quarter of Section 5;

Thence north to the SW corner of Government Lot 2, Section 5;

Thence west to the SW corner of Government Lot 3, Section 6 (T 120 N, R 22 W);

Thence north along the western boundary of Government Lot 3 in Section 6 (T 120 N, R 22 W) to its intersection with the center line of Hennepin County Road 12;

Thence in a northwesterly direction along said center line traversing Government Lot 2 in Section 6 and continuing through Section 31 (T 120 N, R 22 W) to the intersection with the Hennepin-Wright County common boundary line at the mouth of the Crow River;

Thence northerly along said line to the Hennepin County-Sherburne County common boundary line



Thence easterly along said line to the point where the west boundary line of Anoka County intersects with the north boundary line of Hennepin County.

**FOR FURTHER INFORMATION CONTACT:**

Regional Director, Midwest Region,  
National Park Service, 1709 Jackson  
Street, Omaha, Nebraska 68102 (402-  
221-3431).

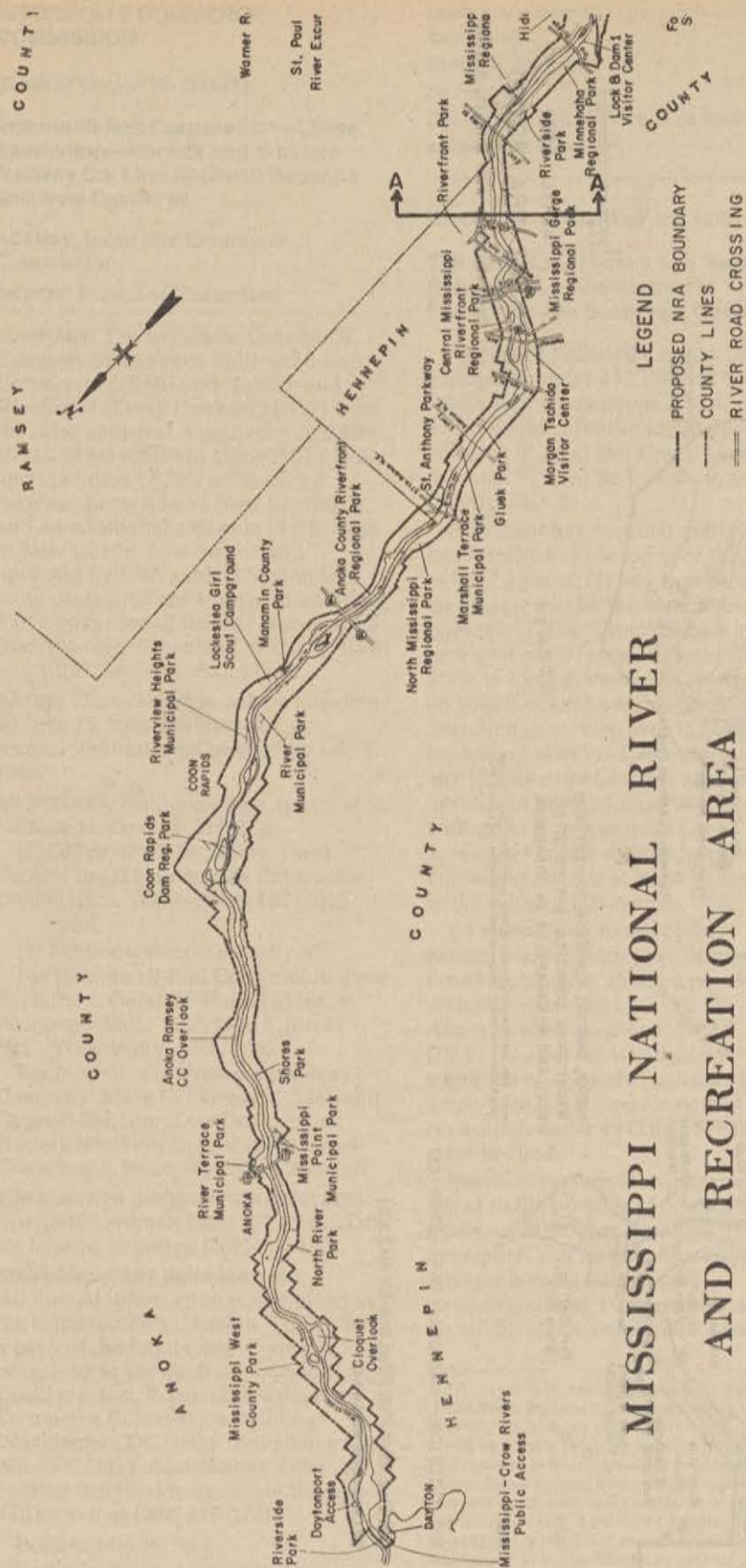
**Don H Castleberry,**

*Regional Director, Midwest Region.*

Date: March 29, 1989.

BILLING CODE 4310-70-M





UNITED STATES DEPARTMENT OF THE INTERIOR - NATIC







**INTERSTATE COMMERCE COMMISSION**

[Finance Docket No. 31441]

**Indiana Hi-Rail Corporation—Lease Exemption—Norfolk and Western Railway Co. Line Between Beesons and New Castle, IN****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts Indiana Hi-Rail Corporation (IHR) and Norfolk and Western Railway Company (NW) from the prior approval requirements of 49 U.S.C. 11343-11345 to allow IHR's lease and operation of 20.5 miles of rail between Beesons and New Castle, IN, and an additional 1.92 mile of trackage at New Castle, now owned and operated by NW, subject to standard labor protective conditions. In addition, IHR's operation of the line is exempted from the requirements of 49 U.S.C. 10761 and 10762, and 49 U.S.C. 11145.

**DATES:** The exemption will be effective on June 15, 1989. Petitions for reconsideration must be filed by July 3, 1989.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31441 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioners' representatives:

For Indiana Hi-Rail Corporation: John D. Heffner, Gerst, Heffner, Foldes, & Podgorsky Suite 1107, 1700 K Street NW., Washington, DC 20006.

For Norfolk and Western Railway Company: Mark D. Perreault, Assistant General Solicitor, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245 TDD for hearing impaired (202) 275-1721.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

Decided: May 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner

Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13879 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No. 52X)]

**The Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—In Buchanan County, MO**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonment* to abandon its 6.05-mile line of railroad between milepost 65.25 at Bee Creek Junction to milepost 71.30 at St. Joseph, in Buchanan County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 12, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup>

<sup>1</sup> A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 22, 1989.<sup>3</sup> Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 3, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszk, The Atchison, Topeka and Santa Fe Building Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1989.

By the Commission Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13785 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****Importation of Controlled Substances; Notice of Application**

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

<sup>3</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.



Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 13, 1989, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 12, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,  
Deputy Assistant Administrator, Office of  
Diversion Control, Drug Enforcement  
Administration.

Dated: June 5, 1989.

[FR Doc. 89-13800 Filed 6-9-89; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Job Corps Advisory Committee; Change of Meeting Date

A public meeting of the Job Corps Advisory Committee (formerly named the Job Corps Center Assessment Advisory Committee) will be held on June 28, 1989, commencing at 8:30 a.m., at the U.S. Department of Labor, Frances Perkins Building, 3rd and Constitution Avenue NW., Room C5515, Seminar Room 3, Washington, DC 20210. This meeting is one day later than announced in the May 30, 1989 notice, 54 FR 22981.

The purpose of the meeting, as part of a long range training process, is to provide the opportunity for the Job Corps Advisory Committee and its subgroups to meet to discuss the Preliminary Report to the Secretary of Labor.

The Job Corps Advisory Committee's Subgroups have conducted a number of meetings and need to report their findings and conclusions to the Advisory Committee prior to the Job Corps Advisory Committee making its report to the Secretary of Labor.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Jobs Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210, telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before June 26, 1989.

Roberts T. Jones,  
Assistant Secretary of Labor.

Signed at Washington, DC, this 6th day of June 1989.

[FR Doc. 89-13888 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-30-M

### Mine Safety and Health Administration

[Docket No. M-89-71-C]

#### Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the house by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,  
Director, Office of Standards, Regulations  
and Variances.

Dated: June 1, 1989.

[FR Doc. 89-13889 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-72-C]

#### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Buchanan No. 1 Mine (I.D. No. 44-04856) located in Buchanan County, Virginia. The petition is filed



under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13890 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-73-C]

#### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Dilworth Mine (I.D. No. 36-04281) located in Greene County, Pennsylvania. The petition is filed under

section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13891 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-74-C]

#### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Date: June 1, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-13892 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-75-C]

#### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Shoemaker Mine (I.D. No. 46-01437) and its Ireland Mine (I.D.



No. 46-01438) both located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

Date: June 1, 1989.

[FR Doc. 89-13893 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-89-76-C]

#### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Blackville No. 1 Mine

(I.D. No. 46-01967), its Blackville No. 2 Mine (I.D. No. 46-01968), its Humphrey No. 7 Mine (I.D. No. 46-01453), its Osage No. 3 Mine (I.D. No. 46-01455), and its Arkwright No. 1 Mine (I.D. No. 46-01452) all located in Monongalia County, West Virginia, to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia, and its Robinson Run No. 95 Mine (I.D. No. 46-01318) located in Harrison County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

Date: June 1, 1989.

[FR Doc. 89-13894 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-89-77-C]

#### Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

Dated: June 1, 1989.

[FR Doc. 89-13895 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M



**NUCLEAR REGULATORY COMMISSION****Advisory Committee on Reactor Safeguards, Subcommittee on Materials and Metallurgy; Meeting**

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 20, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

**Tuesday, June 20, 1989—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will review low upper shelf energy concerns of reactor pressure vessels.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13794 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting**

The ACRS Subcommittee on Mechanical Components will hold a meeting on June 21, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

**Wednesday, June 21, 1989—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will review and discuss: (1) Bechtel/KWU Alliance Program on MOV operability, (2) concerns on the reliability of check valves, and (3) other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13795 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Reactor Safeguards, Extreme External Phenomena; Meeting**

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on June 22, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Thursday, June 22, 1989—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will review GI-40, "Seismic Design Criteria."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13796 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M



### Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on June 15, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Thursday, June 15, 1989—1:00 p.m. Until the Conclusion of Business**

The Subcommittee will discuss a draft RES report of Chernobyl "spin-off" study on the nature, frequency, and procedural violations at U.S. nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 301/492-8109) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary R. Quittschreiber,  
Chief, Project Review Branch No. 2  
[FR Doc. 89-13797 Filed 6-9-89; 8:45 am]  
BILLING CODE 7590-01-M

### SECURITIES AND EXCHANGE COMMISSION

#### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 5, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

BP Prudhoe Bay Royalty Trust  
Common Stock, No Par Value (File No. 7-4596)  
Colonial Investment Grade Municipal Trust  
Shares of Beneficial Interest, No Par Value (File No. 7-4597)  
Putnam High Yield Municipal Trust  
Shares of Beneficial Interest, Without Par Value (File No. 7-4598)  
Bay State Gas Company  
Common Stock, \$3.33 1/3 Par Value (File No. 7-4599)  
Repsol, S.A.  
American Depositary Shares, No Par Value (File No. 7-4600)  
ROC Taiwan Fund (The)  
Shares of Beneficial Interest, \$.01 Par Value (File No. 7-4601)  
Van Kampen Merritt Limited High Income, Inc.  
Common Stock \$.01 Par Value (File No. 7-4602)  
Kemper Corporation  
Common Stock, \$5.00 Par Value (File No. 7-4603)  
Storage Technology Corporation  
Common Stock, \$.10 Par Value (File No. 7-4604)  
Cabletron Systems, Inc.  
Common Stock, \$.01 Par Value (File No. 7-4605)  
Pan Am Corporation  
Warrants expiring 5/1/93, No Par Value (File No. 7-4606)  
TCF Financial Corp.  
Common Stock, \$.01 Par Value (File No. 7-4607)  
Utilicorp United Inc.  
\$1.775 Cumulative Convertible Preference Stock, No Par Value (File No. 7-4608)  
Waban, Inc.  
Common Stock, \$.01 Par Value (File No. 7-4609)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[Fr Doc. 89-13871 Filed 6-9-89; 8:45 am]  
BILLING CODE 8010-02-M

#### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 5, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Houghton Mifflin Co.  
Common Stock, \$1.00 Par Value (File No. 7-4591)  
Howtek, Inc.  
Common Stock, \$.01 Par Value (File No. 7-4592)  
Philips Industries, Inc.  
Common Stock, No Par Value (File No. 7-4593)  
IGI, Inc.  
Common Stock, \$.0 Par Value (File No. 7-4594)  
KeyCorp  
Common Stock, \$.00 Par Value (File No. 7-4595)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the



Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-13872 Filed 6-9-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-19380]

### Application and Opportunity for Hearing; National Medical Enterprises, Inc.

June 5, 1989.

Notice is hereby given that National Medical Enterprises, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Bankers Trust Company (the "Bank") under indentures dated as of June 15, 1981 (the "1981 Indenture") and February 6, 1986 (the "1986 Indenture") between the Company and the Bank which were heretofore qualified under the Act and under an indenture dated March 15, 1989 (the "1989 Indenture") between NME PIP Funding I, Inc., the Company and the Bank which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture of the same obligor.

### The Company Alleges:

(1) Pursuant to the 1981 Indenture, the Company has outstanding \$83,761,000 aggregate principal amount of its 9% Convertible Subordinated Debentures Due 2006, and pursuant to the 1986 Indenture, the Company has outstanding \$282,119,000 aggregate principal amount of its Liquid Yield Option™ Notes due December 4, 2004 (collectively, the "Debt Securities"). The Debt Securities were registered under the Securities Act of 1933 (the "1933 Act") and the 1981 and 1986 Indentures were qualified under the Act.

(2) Pursuant to the 1989 Indenture, NME PIP Funding I, Inc. has outstanding, and the Company has guaranteed on a subordinated basis, \$285,000,000 aggregate principal amount of Remarketed Notes<sup>SM</sup> Due April 3, 1996 (the "Notes"). The Notes have not been registered under the 1933 Act and the 1989 Indenture has not been qualified under the Act on the basis that the Notes were offered and sold in a private placement transaction exempt from registration under the 1933 Act pursuant to section 4(2) thereof.

(3) The Company is not in default under the 1981 Indenture, the 1986 Indenture or the 1989 Indenture. The Company's obligations under the 1981 Indenture, the 1986 Indenture and the 1989 Indenture are wholly unsecured and rank *pari passu*.

(4) The provisions of the 1981 Indenture, the 1986 Indenture and the 1989 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-19380, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than June 30, 1989, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 89-13874 Filed 6-9-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Order 89-6-7]

### Fitness Determination of R.I.C. Inc. D/B/A Skymaster Air Taxi D/B/A Skymaster

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89-6-7, Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find that R.I.C., Inc. d/b/a Skymaster Air Taxi d/b/a Skymaster, is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

**Responses:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 21, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bernardye E. Williams, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9730.

Dated: June 6, 1989.

Patrick V. Murphy, Jr.,  
Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-13812 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-62-M



**Coast Guard**

[CGD 89-046]

**Towing Safety Advisory Committee; Meeting of Subcommittees****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on July 12, 1989 at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of the following topics:
  - (a) Personnel Manning and Licensing
  - (b) Tug Barge Construction, Certification and Operations
  - (c) Port Facilities and Operations
  - (d) Personnel Safety and Work Place Standards
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting.

**FOR FURTHER INFORMATION CONTACT:** CDR R.J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-MP-3), Washington, DC 20593-0001, (202) 267-0449.

Dated: June 2, 1989.

J.D. Sipes,

*Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-13815 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-045]

**Towing Safety Advisory Committee; Meeting****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on July 13, 1989, at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m.

Attendance is open to the interested public. Items to be discussed are expected to be as follows:

- TSAC Operations and Work Program
- Current Work Programs
- Subcommittee Reports
  - A. Personnel Manning and Licensing
  - B. Tug-Barge Construction, Certification and Operations
  - C. Port Facilities and Operations
  - D. Personnel Safety and Work Place Standards
- Briefing of Coast Guard related activities
- Any other matter properly brought before the Committee.

Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than July 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** CDR R. J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-MP-3), Washington, DC 20593-0001, (202) 267-0449.

Dated: June 2, 1989.

J.D. Sipes,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-13818 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

**Maritime Administration**

[Docket No. A-179]

**Application for Acceptable Level of Domestic Carriage Under Section 506 of the Merchant Marine Act, 1936, as Amended**

**SUMMARY:** Notice is hereby given inviting comments on the acceptable level of domestic carriage by operators under Section 506 of the Merchant Marine Act, 1936, as amended.

**DATE:** Comments must be received on or before July 14, 1989.

**ADDRESS:** Comments in triplicate are to be submitted to the Secretary, Maritime

Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel (202) 366-5711.

**SUPPLEMENTARY INFORMATION:** The Maritime Administrator on June 5, 1989, issued a Final Opinion and Order in Docket No. A-179. In that decision it was found that, among other things, it is appropriate for the Maritime Administration to establish guidelines on the acceptable level of domestic carriage for operators of vessels built with the aid of construction-differential subsidy (CDS) when engaged on a voyage in foreign trade on which such vessel may stop at the state of Hawaii, or an island possession or island territory of the United States under section 506 of the Merchant Marine Act, 1936, as amended (Act).

Interested persons are invited to submit comments on such acceptable level. Comments particularly would be helpful on whether that level should be: (1) A set percentage of foreign to total carriage by cargo (TEU or tonnage) or freight revenue; (2) a set TEU or tonnage level of foreign carriage; (3) a threshold percentage of domestic carriage with greater carriage permitted based on establishment of certain facts, and the nature of the facts to be considered; (4) measured on a voyage or annual basis for a CDS-built vessel or on the basis of all CDS-built vessels on a service; (5) a narrative standard; or (6) some other measure.

Interested persons are also invited to submit comments on the procedure by which the acceptable level is to be implemented: (1) Policy guidelines statement; (2) general rulemaking; (3) *ad hoc* determination; or (4) some other means.

The goal of the Maritime Administration in this matter is to establish guidelines that are minimally intrusive and as self-executing as possible, consistent with the concerns of Congress under the Act. The owners and operators of CDS-built vessels need to know the scope of operations which will not jeopardize or breach their CDS contracts. The Jones Act vessel operators and owners need to know such scope so that they can make reasonable business decisions on their operations.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))



By order of the Maritime Administration.  
James E. Saari,  
Secretary.

Date: June 6, 1989.  
[FR Doc. 89-13844 Filed 6-9-89; 8:45 am]  
BILLING CODE 4910-81-M

## National Highway Traffic Safety Administration

### Meetings

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs. This notice also announces two additional meetings to be held on the implementation of the automatic occupant protection requirements of Standard No. 208, *Occupant Protection*.

**DATES:** The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on July 13, 1989, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by July 5, 1989. If sufficient time is available, questions received after the July 5 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by July 5, and the issues to be discussed, will be mailed to interested persons by July 10, 1989. This list will also be available at the meeting.

**ADDRESS:** Questions for the July 13 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

**SUPPLEMENTARY INFORMATION:** NHTSA will hold its regular quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on July 13, 1989. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection agency's

Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

The agency also wishes to announce that following the two public meetings which are scheduled for July 13 and in October, it will conduct a discussion of issues relating to the implementation of the automatic occupant protection requirements of Standard No. 208. Following the July 13 NHTSA/Industry/Public meeting, the agency will hold a meeting on issues regarding automatic safety belts. That meeting will begin at approximately 1:30 p.m. and end at approximately 6:00 p.m. If necessary, the meeting will reconvene at 9:00 a.m. July 14. Discussions will include usage rates of various types of belt systems, their effectiveness in reducing casualties when used, and consumer acceptance issues.

Following the tentatively scheduled October NHTSA/Industry/Public meeting, the agency will hold a meeting to discuss air bag-related issues, including their safety effectiveness, reliability, belt usage with air bags, threshold deployment strategies, sensor strategies, bag design (tethered, folded, type of material, venting, etc.), belt pretensioner use, data collection protocols, and consumer acceptance issues. Presentations by agency staff will be made at the July 13 session. Anyone desiring to make presentations at the July and October meeting should contact Mary Coyle, NRD-01, Room 6206, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-1537 by June 30 for the July 13 meeting, and by September 15 for the October meeting. The agenda for the July 13 meeting will be available by July 10.

Issued on June 7, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.  
[FR Doc. 89-13839 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-59-M

## UNITED STATES INFORMATION AGENCY

### Cultural Property Advisory Committee; Meeting

The Cultural Property Advisory Committee will conduct subcommittee meetings and a meeting of the full Committee on June 21, 22, 23 at 301 Fourth Street, SW., Washington, DC. Agenda for the meeting is as follows:

*Wednesday, June 21*

3-4:30 pm Open to the Public (from 3 to 3:45 pm): Meeting of Administrative/Financial Subcommittee in Room 840. The meeting will be closed to the public at 3:45 pm.

*Thursday, June 22*

9 am-9:30 am Open to the Public: Chairman convenes meeting in Room 840. Administrative/Financial Subcommittee reports and proposes recommendations.  
9:30 am-10 am Closed to the Public: Administrative/Financial Subcommittee report from the closed Subcommittee meeting.  
10 am to Noon and 1:30 pm to 4:30 pm Open to the Public: Legal Subcommittee meets in Room 840.  
10 am to Noon Open to the Public: Communications Subcommittee meets in conference room in Room 849.  
1:30 to 4:30 pm Closed to the Public: Drafting Subcommittee meets in conference room in Room 849.

*Friday, June 23*

9 am to 11 am Open to the Public: Committee meets in Room 840. Discussion of reports by the Legal and Communications subcommittees with recommendations for future action.  
11 am to Noon Closed to the Public: Discussion of report by the Drafting Subcommittee with recommendations for future action.

Those portions of the Committee's meeting and the Administrative/Financial Subcommittee's meeting concerned with assessing performance and other aspects of staff support will be closed to the public in accordance with 5 U.S.C. 552b(c)(6). The meeting of the Drafting Subcommittee and the portion of the Committee's meeting concerned with the report of the Drafting Subcommittee will be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) because there will be discussion of the effectiveness of U.S. import restrictions on artifacts from El Salvador and public disclosure of this



information could lead to the circumvention of the restrictions and would be likely to frustrate significantly implementation of proposed actions and policies.

Members of the public wishing to attend the open sessions of Committee and Subcommittee meetings should contact Ms. Vicki Rose on 485-6612 by Noon on Tuesday, June 20. Public attendance will be limited due to the size of the meeting room and must be arranged in advance because of controlled access to the USIA Building.

Date: June 7, 1989.

Bruce S. Gelb,

Director, United States Information Agency.

**Determination To Close Portions of the Meeting of the Cultural Property Advisory Committee, June 21-23, 1989**

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that certain portions of the meetings of the Cultural Property Advisory Committee and its Subcommittees scheduled on June 21-23 may be closed to the public.

The Committee has requested that those portions of the meetings of the Administrative/Financial Subcommittee and the committee be closed to the

public in accordance with 5 U.S.C. 552b(c)(6). Also, that the meeting of the Drafting Subcommittee and the portion of the Committee meeting where the Drafting Subcommittee reports on the effectiveness of U.S. import restrictions on artifacts from El Salvador be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B).

Date: June 7, 1989.

Bruce S. Gelb,

Director, United States Information Agency.

[FR Doc. 89-13896 Filed 6-9-89; 8:45 am]

BILLING CODE 8230-01-M

**DEPARTMENT OF VETERANS AFFAIRS**

**Advisory Committee on Environmental Hazards; Meeting**

The Department of Veterans Affairs gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of a subcommittee of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 on June 26, 1989. The purpose of the meeting is to assist the Department in the development of Agency policy

with respect to veterans' claims for compensation based upon exposure to herbicides containing dioxin compatible with the decision of the court in *Nehmer v. Veterans Administration, et al.*

The meeting will convene at 9:00 a.m. until 5:30 p.m. in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Affairs Central Office (phone 202/233-2115) prior to June 19, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: June 1, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-13799 Filed 6-9-89; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL ENERGY REGULATORY COMMISSION

June 7, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

**DATE AND TIME:** June 14, 1989, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note.**—Items listed on the agenda may be deleted without further notice.

### CONTACT PERSON FOR MORE

**INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 898th Meeting—June 14, 1989, Regular Meeting (10:00 a.m.)**

- CAP-1.  
Project No. 663-003, Puerto Rico Electric Power Authority
- CAP-2.  
Project No. 7490-012, Commonwealth Hydroelectric, Inc.
- CAP-3.  
Docket No. UL89-16-001, Consolidated Hydro, Inc.
- CAP-4.  
Project No. 9838-002, Catalyst Energy Department Corporation
- CAP-5.  
Project Nos. 7802-006 and 10488-000, Natural Energy Resources Company
- CAP-6.  
Project No. 10477-001, Burke Dam Hydro Associates
- CAP-7.  
Docket No. EL88-29-001, Larry M. Taylor
- CAP-8.  
Project No. 3512-010, UAH-Braendly Hydro Associates
- CAP-9.  
Docket No. ER89-312-000, Vermont Yankee Nuclear Power Corporation
- CAP-10.  
Docket No. ER89-366-000, New York State Electric & Gas Corporation
- CAP-11.  
Docket No. ER80-259-012, Kansas Gas & Electric Company

- CAP-12.  
Docket No. EL88-38-001, Minnesota Power & Light Company
- CAP-13.  
Docket No. QF88-72-002, Walker Resources, Inc.
- CAP-14.  
Docket No. ER84-560-007, Union Electric Company
- CAP-15.  
Docket Nos. ER84-571-006, ER85-486-001 and ER86-300-001 (Phase II), Utah Power & Light Company
- CAP-16.  
Omitted
- CAP-17.  
Docket No. QF86-590-003, Coso Energy Developers  
Docket No. QF86-591-002, Coso Power Developers

### Consent Miscellaneous Agenda

- CAM-1.  
Docket No. FA88-83-001, Public Service Company of Colorado
- CAM-2.  
Docket No. GP84-23-029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corporation, Prairie Oil Company, Sharon Oil Company, Almac Oil Company, Judy Oil Company, Kim Petroleum Company, Inc., Komanche Oil & Gas Company, Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corporation, Walker Operating Corporation, and 3W Oil, Inc.
- CAM-3.  
Docket No. GP86-51-001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc.
- CAM-4.  
Docket No. SA88-13-002, Valero Interstate Transmission Company

### Consent Gas Agenda

- CAG-1.  
Docket No. RP89-169-000, Southern Natural Gas Company
- CAG-2.  
Docket No. RP89-170-000, Williams Natural Gas Company
- CAG-3.  
Docket No. RP89-174-000, Southern Natural Gas Company
- CAG-4.  
Docket No. RP89-178-000, Colorado Interstate Gas Company
- CAG-5.  
Docket No. RP89-137-001, Northwest Pipeline Corporation
- CAG-6.  
Docket No. RP89-44-001, Florida Gas Transmission Company
- CAG-7.  
Docket No. RP89-119-002, Texas Gas Transmission Corporation
- CAG-8.

- Docket No. TA89-1-26-000, Natural Gas Pipeline Company of America
- CAG-9.  
Docket Nos. TA89-1-4-000, 001, 002, TM89-2-4-000 and 001, Granite State Gas Transmission, Inc.
- CAG-10.  
Docket No. RP88-228-016, Tennessee Gas Pipeline Company
- CAG-11.  
Docket Nos. RP88-228-017 and RP89-29-004, Tennessee Gas Pipeline Company
- CAG-12.  
Docket Nos. RP85-177-062 and CP88-136-006, Texas Eastern Transmission Corporation
- CAG-13.  
Docket No. RP89-44-002, Florida Gas Transmission Company
- CAG-14.  
Docket Nos. RP89-140-002, 001, TA89-1-43-001 and RP88-39-002, Williams Natural Gas Company
- CAG-15.  
Docket No. OR88-1-001, Cook Inlet Pipe Line Company
- CAG-16.  
Docket No. RP85-47-005, East Tennessee Natural Gas Company
- CAG-17.  
Docket No. RP87-7-050, Transcontinental Gas Pipe Line Corporation
- CAG-18.  
Docket No. RP88-184-009, El Paso Natural Gas Company
- CAG-19.  
Docket Nos. RP88-198-008 and RP89-59-002, Transwestern Pipeline Company
- CAG-20.  
Docket No. RP89-73-001, Pelican Interstate Gas System
- CAG-21.  
Docket No. RP86-87-004, Questar Pipeline Company (formerly Mountain Fuel Resources, Inc.)
- CAG-22.  
Docket Nos. RP88-262-005 and CP89-917-002, Panhandle Eastern Pipe Line Company
- CAG-23.  
Docket Nos. TQ89-1-46-017, RP86-165-011 and RP86-166-011, Kentucky West Virginia Gas Company
- CAG-24.  
Docket Nos. CP86-578-022 and RP85-13-030, Northwest Pipeline Corporation
- CAG-25.  
Omitted
- CAG-26.  
Omitted
- CAG-27.  
Docket No. CP89-692-001, Amerada Hess Corporation
- CAG-18.  
Docket No. CI61-945-002, Pennzoil Products Company (Successor-in-Interest to Pennzoil Company)
- CAG-29.



- Docket No. CI89-191-001, Shell Gas Pipeline Company  
CAG-30.  
Docket Nos. ST89-1991-000, ST89-1992-000, ST89-1993-000, ST89-1994-000, ST89-1995-000, ST89-1996-000, ST89-1997-000, ST89-1998-000, ST89-1999-000, ST89-2000-000 and ST89-2001-000, TOMCAT, a Texas Intrastate Pipeline  
CAG-31.  
Docket Nos. ST88-4888-000, ST88-4889-000 and ST88-5419-000, Gulf States Pipeline Corporation  
CAG-32.  
Docket Nos. ST89-1257-000, ST89-1802-000 and ST89-2033-000, Cabot Pipeline Company  
CAG-33.  
Docket Nos. ST81-260-003, 004, 005, ST85-559-000, ST85-630-000 and ST85-789-000, Mustang Fuel Corporation and Enogex Inc.  
CAG-34.  
Docket Nos. ST88-5892-000, ST89-194-000, ST89-296-000, ST89-349-000, ST89-350-000, ST89-1505-000 and ST89-1506-000, BP Gas Transmission Company  
CAG-35.  
Docket No. CP87-408-001, Owens-Corning Fiberglas Corporation v. Transcontinental Gas Pipe Line Corporation  
CAG-36.  
Docket Nos. CP88-860-001 and CP89-248-001, Williams Natural Gas Company  
CAG-37.  
Docket No. CP87-378-001, Midwestern Gas Transmission Company  
CAG-38.  
Docket No. CP86-678-001, Natural Gas Pipeline Company of America  
CAG-39.  
Omitted  
CAG-40.  
Omitted  
CAG-41.  
Omitted  
CAG-42.  
Docket No. CP89-302-000, Williston Basin Interstate Pipeline Company  
CAG-43.  
Docket No. CP89-1133-000, Tennessee Gas Pipeline Company  
CAG-44.  
Docket No. CP87-784-001, Panhandle Eastern Pipe Line Company  
CAG-45.  
Docket Nos. CP88-225-003, CP88-759-001 and CP87-389-002, National Fuel Gas Supply Company

#### I. Licensed Project Matters

- P-1.  
Reserved

#### II. Electric Rate Matters

- ER-1.  
Docket No. EL88-39-000, Northern States Power Company (Wisconsin)  
Docket No. EL89-9-000, Northern States Power Company (Minnesota). Order on recovery of minimum take payments.

#### Miscellaneous Agenda

- M-1.  
Docket No. FA88-70-001, Missouri Public Service Company, A Division of UtiliCorp United, Inc. Opinion and order on accounting adjustment.  
M-2.  
Reserved  
M-3.  
Reserved

#### I. Pipeline Rates Matters

- RP-1.  
Docket Nos. RP87-71-002 and RP88-182-002, Gas Research Institute. Order on remand concerning GRI's end-use research.  
RP-2.  
Docket No. RP88-209-000, Natural Gas Pipeline Company of America. Order concerning settlement on allocation of demand costs, seasonal rates and mileage of transportation rates.  
RP-3.  
Docket Nos. CP82-487-000 and TA87-4-49-002 (Phase V), Williston Basin Interstate Pipeline Company. Initial decision on take-or-pay buyout and buydown amounts in purchased gas costs.  
RP-4.  
Docket Nos. CP82-487-016, CP82-487-001, TA84-2-49-000 and TA85-1-49-000 (Phase III), Williston Basin Interstate Pipeline Company. Concerning initial decision on gas purchase contracts being imprudent or abusive.  
RP-5.  
Docket Nos. CP82-487-014, CP82-487-015, RP84-62-000 and RP84-93-000 (Phase II), Williston Basin Interstate Pipeline Company. Initial decision on costs allocation and storage and transportation rate design, rate base treatment of 1983 net injections into storage and rate of return.

#### II. Producer Matters

- CI-1.  
Reserved

#### III. Pipeline Certificate Matters

- CP-1.  
Docket Nos. CP88-6-001 and RP88-8-007, United Gas Pipe Line Company  
Docket Nos. CP78-545-000, CP79-129,000, CP80-164-000 and CP78-432-000, ANR

- Pipeline Company and ANR Storage Company  
Docket Nos. CP83-232-000 and CP84-196-000, Columbia Gulf Transmission Corporation  
Docket No. CP75-104-000, High Island Offshore Systems  
Docket No. CP78-433-000, Michigan Consolidated Gas Company  
Docket Nos. CP78-124-000 and CP86-395-000, Northern Border Pipeline Company  
Docket No. ST88-3071-000, Northern Natural Gas Company  
Docket No. CP79-78-000, Panhandle Eastern Pipe Line Company  
Docket Nos. CP78-262-000, CP76-418-000, CP76-428-000 and CP77-410-000, Sea Robin Pipeline Company  
Docket Nos. CP75-19-000, CP79-374-000 and CP80-509-000, Southern Natural Gas Company  
Docket No. CP74-89-000, Stingray Pipeline Company  
Docket Nos. CP78-545-000 and CP84-387-000, Tennessee Gas Pipeline Company  
Docket Nos. CP80-31-000 and CP81-26-000, Trunkline Gas Company  
Docket No. CP76-118-000, U-T Offshore System. Inquiry in response to requests for rehearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14036 Filed 6-8-89; 3:52 pm]

BILLING CODE 6717-01-M

#### FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on June 7, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 14, 1989.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed 1990 Federal Reserve Bank budget objective.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 7, 1989.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 89-13951 Filed 6-7-89; 5:00 pm]

BILLING CODE 6210-01-M



# Test Report

Monday  
June 12, 1989

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## Part II

## Department of Transportation

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### Research and Special Programs Administration

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49 CFR Part 107 et al.  
Requirements for Cargo Tanks; Final  
Rule



## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 171-100, 172-115, 173-212, 176-27, 177-71, 178-89, 180-2]

RIN 2137-AA42

## Requirements for Cargo Tanks

**AGENCY:** Research and Special Programs Administration (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Hazardous Materials Regulations (HMR) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks (including specifications not authorized for new construction). This rule revises and clarifies certain commodity sections in Part 173, reorganizes the cargo tank specifications in Part 178, and provides for vacuum-loaded cargo tanks. It establishes a new Part 180 containing requirements governing the maintenance, use, inspection, repair, retest and requalification of cargo tanks used to transport hazardous materials. In response to comments, and as an alternative to another method included in the proposal, this rule establishes certain registration requirements in Part 107 for persons who are engaged in the manufacture, repair, or certification of any DOT specification cargo tank or any cargo tank manufactured under exemption to transport hazardous materials.

The intended effect of these regulatory changes is to improve safety in the transportation of bulk quantities of hazardous materials in cargo tank motor vehicles. This final rule includes improved standards for inspection and testing of cargo tanks, improved valves and closures to prevent leakage and the risk of fire in overturns and other accidents, and new qualification criteria for cargo tank manufacturers, repairers, and inspectors.

**DATES:** Effective December 12, 1989. See also specific applicability dates in the regulations adopted under this rulemaking. However, compliance with the regulations as amended in §§ 178.337, 178.338 and Part 180, with the exception of those concerning registration and design certification, is authorized from June 12, 1989.

For this final rule, the 30 day limitation for the receipt of a petition for

reconsideration (49 CFR 106.35) is hereby waived and 90 days provided in place thereof. Petitions for reconsideration must be received on or before September 12, 1989.

The incorporation by reference of certain publications listed in this amendment is approved by the Director of the Federal Register as of December 12, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Charles Hochman, Jose Pena, Susan Murphy (202) 366-4545, or Hattie Mitchell (202) 366-4488, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; or, Richard Singer (202) 366-2994, Office of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****I. Background**

On September 17, 1985, RSPA published a notice of proposed rulemaking (NPRM) in the *Federal Register* under Docket HM-183.183A (50 FR 37766). The NPRM contained proposals to revise and clarify the HMR pertaining to the manufacture, maintenance, requalification and use of all specification cargo tanks. These proposals were based on research findings, petitions for rule change, requests for interpretation of the regulations, recommendations from other agencies, and RSPA's and the Federal Highway Administration's (FHWA) efforts to eliminate certain exemptions and to correct discrepancies and deficiencies appearing in the requirements for cargo tanks in the HMR. On December 5, 1985, RSPA published a document making certain corrections and changes to the NPRM (50 FR 49866), and on January 23, 1986, RSPA extended the time for filing written comments on the NPRM (51 FR 3085). Interested readers should refer to the aforementioned documents for additional background discussion.

During 1985 and 1986, RSPA and FHWA held a public briefing and three public hearings to allow interested persons to participate in this rulemaking proceeding. In addition, RSPA received over 100 written comments on the proposals contained in the NPRM. These comments were from trade associations, cargo tank manufacturers and repairers, shippers, carriers, disinterested inspectors, insurance organizations, State and local agencies, etc. All

comments, including late submission and hearing transcripts, were reviewed by RSPA and FHWA staff members. These comments contain many diverse views on how to improve the safe transportation of hazardous materials in cargo tanks. Some of the comments were vague or unsupported by data. RSPA and FHWA held a series of public working meetings with certain commenters to obtain clarification of their comments and additional supporting information on their alternate proposals. These meetings were held from March 1987 through February 1988.

Several well-defined aspects of the NPRM were the subject of most of the commentary. In some cases, a review of the costs and safety benefits involved has resulted in modification of the proposals. A listing of twenty-four of the most important proposals appeared in the preamble of the NPRM beginning at 50 FR 37766. These proposals are repeated below with an indication, in brackets, of whether the proposal is or is not adopted in this final rule. The NPRM proposed—

1. To require that each manufacturer of cargo tanks hold a current American Society of Mechanical Engineers (ASME) Certificate of Authorization. [adopted]
2. To require that each cargo tank designed with an internal design pressure of 15 pounds per square inch gauge (psig) or greater be "constructed and certified in conformance with the ASME Code", and each cargo tank with an internal design pressure less than 15 psig be "constructed in accordance with the ASME Code." [adopted with changes]
3. To require that all new specification cargo tanks be certified by an Authorized Inspector who is commissioned by the National Board of Boiler and Pressure Vessel Inspectors (National Board). [adopted with changes]
4. To require that ring stiffeners on a cargo tank be of a design that can be visually inspected. [adopted with changes]
5. To authorize the use of external self-closing stop valves in place of internal self-closing stop valves in certain circumstances. [adopted]
6. To require that the strength of connecting structures on a multi-tank cargo tank be equal to that required of the cargo tank motor vehicle. [adopted]
7. To specify minimum standards for the strength and size for a manhole on all new cargo tanks. [adopted with changes]
8. To require retrofit of any manhole closure not conforming to the prescribed



strength requirement, within five years from the date of this publication. [adopted with minor changes]

9. To specify the accident damage protection required for cargo tank motor vehicles [adopted with minor changes].

10. To specify in Parts 173 and 178 the relationship between the cargo tank and its lading to guide manufacturers and shippers. [adopted with changes]

11. To clarify that the prescribed minimum thickness for the tank shell and heads excludes materials added for cladding, lining or corrosion allowance. [adopted with changes]

12. To specify the parameters to be considered in determining the effective stresses on a cargo tank. [adopted with changes]

13. To clarify that a remote means of closure for all internal or external self-closing stop valves is required. [adopted with changes]

14. To require on all cargo tanks constructed after effective date of rule, all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device. [adopted with changes]

15. To revise the MC 307 and MC 312 cargo tank specification to provide for the manufacture of vacuum-loaded cargo tanks. [adopted with changes]

16. To specify a minimum design pressure of 15 psig for Specification MC 312 cargo tanks. [adopted with changes]

17. To require that all specification cargo tanks be pressure retested. [adopted]

18. To require that all specification cargo tanks be visually inspected every year. [adopted with changes]

19. To require that the shell and head of an unlined cargo tank in a service corrosive to tank metal be thickness tested at least once every two years. [adopted]

20. To specify certain additional safety control measures for a cargo tank used to transport a lading having more than one hazard class. [adopted with changes]

21. To require that a cargo tank used to transport poisonous materials or certain hazardous materials having multiple hazards have a minimum design pressure of 25 psig. [adopted with changes]

22. To require that a cargo tank inspector or tester meet certain minimum knowledge and experience qualifications. [adopted with changes]

23. To require that major repairs on cargo tanks be performed by a facility that is a holder of an ASME U stamp, a National Board R stamp or be witnessed and certified by an Authorized Inspector. [adopted with changes]

24. To require that an owner of a cargo tank used in the transportation of hazardous materials keep certain records. [adopted]

Those proposed requirements which met with substantial objection by commenters are discussed in this preamble by subject. Following the subject-by-subject review is a review by section which briefly discusses each section of the rule and the significant changes that have been made since the NPRM. (As used in this preamble, "we" refers to "RSPA and FHWA".)

## II. Specification Design And Construction Requirements—Part 178

Several commenters, including the Truck Trailer Manufacturers Association (TTMA) and the National Tank Truck Carriers (NTTC), stated that the proposed rule so fundamentally changes the design and construction of new cargo tanks that confusion will exist among inspectors, shippers, buyers, etc. unless designations other than MC 306, MC 307 and MC 312 are used. TTMA further stated that the MC specification numbers were changed in 1967 following minor changes in the specifications. We agree with these commenters and have revised the specification designations covering new cargo tank constructions. Instead of the "MC" prefix designation, these new specification designations are preceded with a "DOT" prefix for consistency with the prefix designations of other DOT packaging specifications. To eliminate confusion in the future to references for the now obsolete MC 306, MC 307 and MC 312 cargo tank specifications contained in §§ 178.340 through 178.343, we have revised the section numbering designations. These new individual specifications and section numbering designations are: DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348). The general requirements applicable to these specification cargo tanks are contained in § 178.345.

In this preamble, we have used these specifications and section designations to distinguish between discussions of the existing cargo tanks and the new cargo tank construction requirements.

### A. Application of the ASME Code to Low Pressure Cargo Tanks

Commenters objected to the proposed requirement that all new DOT specification cargo tanks be constructed in conformance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code), and that each cargo tank with an internal design pressure greater than 15 psig be "constructed and

certified in conformance with the ASME Code." They argued that the ASME Code does not apply to low-pressure (i.e., pressures below 15 psig) non-stationary vessels. Several commenters, including the TTMA and the NTTC, stated that DOT 406 cargo tanks, and DOT 407 cargo tanks with a working pressure less than 50 psig should be constructed by a manufacturer holding a current ASME Certificate of Authorization, but should not be "constructed in accordance with the ASME Code." Commenters also stated that requiring the design and construction of DOT 406 cargo tanks in accordance with the ASME Code would in practice eliminate oval tank designs and require the construction of tanks with a cylindrical shell and heads, with a knuckle radius larger than that currently used. This circular cross section design would create cargo tanks with a higher center of gravity that are less stable than the currently designed oval cross-section tanks. Commenters stated that compliance with the ASME Code for low pressure DOT 407 cargo tanks (design pressure less than 50 psig) would also eliminate the practice of manufacturing multi-cargo tank motor vehicles with inserted ("stuffed") heads and require a redesign of these cargo tanks to incorporate heads with a 6% knuckle radius. Commenters claimed that if these proposals were adopted, manufacturers would no longer be able to shape their own heads and would have to purchase them. TTMA maintained there is no adverse accident experience data to substantiate that the current knuckle radius and the "stuffed head" configuration have presented any safety problems. TTMA listed a number of sections in the ASME Code which they stated should not apply to the construction of DOT 406 cargo tanks, which included those sections on head formation and installation.

Although the ASME Code allows an exception for pressure vessels with an internal design pressure of less than 15 psig from the requirements of the ASME Code, we believe these vessels can be constructed in accordance with the ASME Code. Extending the application of the ASME Code to DOT 406 cargo tanks should enhance the overall quality of construction of DOT 406 cargo tanks. However, we recognize there are certain design configurations and construction practices used in constructing MC 306 and MC 307 cargo tanks for many years that have been proven to be reliable. Therefore, as adopted in this final rule, DOT 406 cargo tanks must be constructed in accordance with the ASME Code, with certain exceptions.



These exceptions, found in § 178.346-1, will allow the continued use of the "stuffed head" configuration and permit a knuckle radius of three times the material thickness and not less than one-half inch. Similar exceptions are provided for DOT 407 cargo tanks with a working pressure of 35 psig or less.

Currently only DOT Specification MC 307 cargo tanks with a working pressure greater than 50 psig are required to be designed in accordance with the ASME Code. The NPRM proposed that all DOT Specification MC 307 cargo tanks be constructed and certified in conformance with the ASME Code. In considering the design requirements for DOT 407 cargo tanks, we reviewed the data submitted showing the number and pressure rating of current MC 307 cargo tanks.

A review of the data showed that 35 psig is a natural breakpoint for cargo tank construction in the current fleet. Cargo tanks with a maximum allowable working pressure greater than 35 psig are generally not constructed with stuffed heads. Because of this natural breakpoint and the fact that the hazard to the public increases with pressure, we have required that all DOT 407 cargo tanks with a maximum allowable working pressure greater than 35 psig be constructed and certified in conformance with the ASME Code. Commenters did not object to the application of the ASME Code to higher pressure DOT 407 and most DOT 412 cargo tanks. This requirement has been included in the final rule.

#### *B. Cargo Tank: Manufacturer Qualification, Registration, Quality Control, and Certification*

The existing DOT certification system for cargo tanks, except for ASME Code tanks, allows a manufacturer to certify that a cargo tank conforms to all requirements of the applicable specification. The HMR contain no criteria for assessment of a manufacturer's knowledge and skills in exercising the certification process. As we stated in the NPRM, most cargo tank manufacturers exhibit great knowledge, skills, and integrity; however, a number of manufacturers have demonstrated very limited knowledge and skill about matters such as stress analyses, welding, metallurgy, recognized good design and quality control practices, and the HMR. We believe that a qualification system is necessary for all cargo tank manufacturers to assure quality control. Further, we believe that a qualification system is needed for those who inspect and certify cargo tanks to assure a high level of compliance with the design,

construction, and test requirements. To achieve this goal, the NPRM proposed:

- All cargo tank manufacturers hold a current ASME "U" Certificate of Authorization.
- An Authorized Inspector commissioned by the National Board must certify each DOT cargo tank in accordance with the ASME Code and the applicable specification.
- For repairs on cargo tanks involving welding on the tank wall, an Authorized Inspector certify the repair and the repair work must be performed by:
  - Manufacturers who hold an ASME "U" Certificate of Authorization;
  - Repairers who hold a National Board "R" Certificate of Authorization; or
  - Persons who do not hold an ASME or National Board Certificate, provided that the work is performed under the direct supervision of an Authorized Inspector and the cargo tank has a design pressure of less than 15 psig.

Commenters generally supported the requirement that all cargo tank manufacturers hold a current ASME Certificate of Authorization on the basis that it will assure a minimum level of manufacturing qualification, particularly for welding and quality control procedures. However, some commenters argued that the cost of obtaining an ASME Certificate of Authorization for use of the "U" stamp would be excessive. We should point out that existing § 178.340-2(a) prescribes that cargo tanks are to be " \* \* \* designed and constructed in accordance with the best known and available practices \* \* \*." The ASME Code is a nationally recognized industry standard for the design and construction of pressure vessels and ASME quality control procedures and qualified welders are among the best known and available. We believe that the cost of obtaining a "U" stamp will be minimal for those manufacturers currently using the "best known and available practices" as currently prescribed in the HMR. A number of cargo tank manufacturers currently hold an ASME Certificate of Authorization. We believe that requiring all new DOT specification cargo tanks be constructed by a manufacturer holding a current ASME Certificate of Authorization is necessary to enhance the qualifications of cargo tank manufacturers. Therefore, this requirement is adopted as proposed.

Commenters objected to the proposed use of Authorized Inspectors, to the exclusion of all other possible

inspectors, for the inspection and certification of cargo tanks. They argued that: (1) The manufacturer or the owner of a cargo tank is the person who is best qualified to certify that the cargo tank conforms to the applicable specification; (2) Authorized Inspectors are not knowledgeable in the DOT specification requirements and the experience of these persons is limited to stationary pressure vessels and not to cargo tank motor vehicles; and (3) requiring the use of an Authorized Inspector to certify each cargo tank would result in production delays due to inspection scheduling difficulties arising from the limited number of Authorized Inspectors currently commissioned by the National Board. In addition, commenters characterized the cost of employing an Authorized Inspector for cargo tank certification as excessive, adding as much as \$1,000 to the cost of each cargo tank.

As an alternative to requiring that all DOT specification cargo tanks be constructed in accordance with the ASME Code and inspected and certified by an Authorized Inspector, commenters recommended that all cargo tank manufacturers hold a current ASME "U" stamp, follow quality control procedures according to the ASME Code, and register with the DOT. Commenters suggested variations of the registration alternative ranging from a simple notification of activities to DOT approval of all cargo tank manufacturing facilities. Commenters presented similar arguments and alternative proposals with regard to cargo tank repairers. The NTTC, in its comments, recommended that manufacturers and repairers, as well as hazardous materials shippers and carriers, be required to register a notification of their activities with the Department. This registration would include an annual report of the organization's activities and operations and the name of the corporate officer responsible for compliance with the regulations.

In its comments to the docket, the TTMA simply stated that "MC specification cargo tank manufacturers should be registered with DOT." In the public working meeting held between the DOT and the National Petroleum Gas Association (NPGA; formerly the National L-P Gas Association) and Compressed Gas Association (CGA), the participants proposed that the DOT inspect and approve cargo tank manufacturers and repairers as a condition of their doing business in the area of DOT specification cargo tanks. In other public working meetings, representatives from the NTTC, TTMA,



American Petroleum Institute (API), NPGA, and CGA suggested that, in conjunction with the registration program, inspection and certification of cargo tank manufacturers be conducted by DOT inspectors or by "DOT approved" inspectors, who could be employees of the manufacturer. In summary, commenters have supported DOT's belief that qualification standards are necessary for persons who manufacture, assemble, repair, inspect, or certify cargo tanks and cargo tank motor vehicles.

With respect to the qualifications for persons who manufacture or repair cargo tanks, we believe a basic competency evaluation and approval is demonstrated by the person's having an ASME or National Board Certificate of Authorization. To obtain an authorization, the applicant's employees, facilities, and quality assurance plan must be audited and approved. These approval processes by the ASME and National Board are nationally and internationally recognized systems. Most commenters have agreed that this would provide an acceptable qualification standard. Because of the quality and broad acceptance of the ASME's and National Board's approval processes, we believe it is not necessary for DOT to further audit and approve persons who hold these certificates as proposed by several commenters. DOT approval of persons holding these certificates would be unnecessarily costly and burdensome. Furthermore, because cargo tank motor vehicle assemblers do not manufacture cargo tanks but only assemble cargo tanks to motor vehicles, we believe it is unnecessary to require these assemblers to obtain an ASME Certificate of Authorization.

With respect to the qualifications for persons who inspect or certify cargo tanks and cargo tank motor vehicles, we still believe that the current system of self-certification is inadequate since no qualification requirements are placed on persons who inspect and certify cargo tank design, construction, repair, and testing for conformance with the applicable specifications. However, because of the stringent qualification standards for persons who manufacture or repair cargo tanks, we agree with many commenters that these functions can be adequately performed by individuals other than "disinterested" Authorized Inspectors who have the necessary qualifications. We believe these qualifications can be developed through a combination of education and work experience, particularly experience in cargo tank design,

construction, or repair. To ease the economic and scheduling burden in requiring that the person performing the certification be an Authorized Inspector commissioned by the National Board, in this final rule we are allowing greater flexibility in the selection of inspectors, as recommended by commenters.

In place of the proposed requirement for independent review of each cargo tank by an Authorized Inspector, we have relaxed the provisions in the final rule to provide that the design be certified by a "design certifying engineer" and that construction, assembly, and repair of cargo tanks be certified by a "Registered Inspector." For certification of a cargo tank design, a design certifying engineer may be an Authorized Inspector who has the knowledge and ability to determine if a cargo tank design meets the applicable DOT specification, or a person other than an Authorized Inspector, such as a professional engineer (registered by the appropriate authority of a State of the United States or a Province of Canada) who has this knowledge and ability. The design certifying engineer must have at least one year of work experience in structural or mechanical design and an engineering degree. We believe these qualifications are necessary to ensure that the individual performing the functions of a design certifying engineer has knowledge and skill in areas such as stress analysis, welding, metallurgy, and recognized good design and quality control practices.

For certification of cargo tank construction, assembly or repairs, a Registered Inspector may be an Authorized Inspector who has the knowledge and ability to determine if a cargo tank conforms with the applicable DOT specification or a person other than an Authorized Inspector who has this ability. The Registered Inspector must have the following combination of work experience in cargo tank construction or repair, and education: One year of work experience and a bachelors degree in engineering, two years of work experience and an associate degree in engineering, or three years of work experience and a high school diploma. These qualifications are the same as those prescribed by the National Board for Authorized Inspectors. We believe these qualifications are necessary to ensure that the individual performing the functions of a Registered Inspector has knowledge and skill in areas such as welding, metallurgy, and recognized cargo tank design and quality control practices.

We agree with commenters that it is difficult at present for DOT to monitor compliance with and enforcement of the HMR, because it is difficult to identify and locate persons who manufacture, assemble, repair, inspect, or certify cargo tanks or cargo tank motor vehicles. The NPRM would have required that all DOT specification cargo tanks be constructed in conformance with the ASME Code, and inspected and certified by an Authorized Inspector who has been approved by the National Board. The repair of cargo tanks also would have been inspected and certified by an Authorized Inspector. This would have included an approval and registration process under both the ASME and the National Board but not with the DOT. We no longer believe this ASME and National Board approval process to be necessary for each cargo tank. We believe it is unnecessary for DOT to approve each cargo tank manufacturer or repairer, as suggested by some commenters, since as we have stated a basic competency evaluation and approval is demonstrated by having an ASME or National Board Certificate of Authorization. However, we believe that it is necessary for such persons to be identified to DOT. Therefore, in new Subpart F of Part 107, requirements for the registration by RSPA of cargo tank manufacturers, assemblers, and repairers have been adopted, in place of the more extensive approval and registration processes proposed in the notice and suggested by commenters.

Under the registration provisions in Subpart F to Part 107, as adopted herein, any person engaged in the manufacture, assembly, certification, inspection or repair of a DOT specification cargo tank or cargo tank motor vehicle, or a cargo tank manufactured under the terms of an exemption, must register with the Department. Information and documents required to be submitted as a part of the registration for manufacturers include:

(1) A current ASME Certificate of Authorization.

(2) A statement signed by the person who has oversight for ensuring compliance with the applicable requirements of the chapter. The person must certify knowledge of those requirements and that each employee who has responsibility for ensuring quality control during the manufacture of a cargo tank, or for ensuring compliance with other cargo tank specification, qualification or design requirements, will meet certain minimum qualification requirements.

(3) A description of the specific function to be performed, e.g.,



manufacture of cargo tanks, or the assembly of cargo tanks to a motor vehicle.

Information and documents required to be submitted by repairers are the same as those for manufacturers, except that a National Board Certificate of Authorization for use of the "R" stamp may be submitted instead of an ASME Certificate. Registration renewal will be every three years or upon reissuance of the ASME or National Board Certification, whichever occurs first.

### III. Qualification, Maintenance—Part 180

This final rule establishes a new Part 180 containing all requirements applicable to persons who perform functions relating to maintenance and continuing qualification of packagings, such as prescribed inspections, testing, reconditioning and repair of cargo tanks. An outline of the subparts that will be contained in Part 180 and the present sections containing these requirements are as follows:

#### Part 180—Continuing Qualification and Maintenance of Packagings.

##### Subpart A—General.

Subpart B—Non-bulk packagings (except cylinders); Qualification and maintenance (§ 173.28).

Subpart C—Cylinders; Qualification and maintenance (§ 173.34).

Subpart D—Portable Tanks; Qualification and maintenance (§§ 173.32, 173.32a, 173.32b, 173.32c).

Subpart E—Cargo Tanks; Qualification and maintenance (§§ 173.33, 177.824).

Subpart F—Tank Cars; Qualification and maintenance (§ 173.31).

Only the requirements contained in Subparts A and E are adopted in this final rule. Subpart A contains general requirements pertaining to the continuing qualification and use of packagings set forth in this Part. Subpart E contains requirements on the maintenance and retesting of DOT specification cargo tanks and cargo tanks used under an exemption, and the requirements for continuing qualification of a cargo tank as an authorized packaging for hazardous materials. Certain other provisions addressed in Subpart E are the continued use of existing cargo tanks made to an obsolete specification, and cargo tanks conforming to and used under a DOT exemption containing provisions that have been incorporated in the HMR.

#### A. Manhole Closures

Included in Subpart E are requirements pertaining to features on cargo tanks such as the leak-tightness of manhole closures. Proposed § 180.405(a) would have required that each cargo tank be equipped with a secure closure

on each manhole which is structurally capable of withstanding for at least 5 minutes, without leakage or permanent deformation, a static internal fluid pressure of at least 36 psig or the cargo tank test pressure, whichever is greater. Manhole assemblies on existing cargo tanks not meeting the proposed requirements would have been required to be retrofitted. Based on data furnished by a manufacturer, we estimated the cost to retrofit the affected cargo tanks to be between \$20 and \$250 per manhole when included as part of scheduled maintenance and testing.

Commenters expressed no objection to the proposal as it relates to manhole closures on MC 307 and MC 312 cargo tanks. Regarding MC 306 cargo tanks, commenters stated that requiring the manhole assembly to be structurally capable of withstanding 36 psig without permanent deformation is unrealistic and would not enhance safety. They stated that TTMA Recommended Practice (RP) No. 61-82, upon which the proposed structural capability requirement was based, allows some leakage, and deformation that does not affect lading retention capability. Commenters suggested a revision of the proposal to allow the use of manhole assemblies conforming to TTMA RP No. 61-82. We believe that to allow leakage of product from a manhole assembly creates an unsafe condition.

Accordingly, as suggested by the commenters, we have revised proposed § 180.405(g) to adopt provisions consistent with a revised version of TTMA's standard for MC 306 type cargo tanks. These provisions specify no leakage, but allow deformation not affecting lading retention capability, and specify a quality control testing frequency of at least one percent (or one manhole closure, whichever is greater) of all manhole closures of each type produced, every three months. We believe that allowing deformation of the tank without leakage will not affect safety.

Commenters stated that we underestimated the cost of retrofitting affected cargo tanks and that the replacement cost for manholes requiring new collar installation could be as much as \$1,300. Commenters also stated there are many cargo tanks equipped with manhole closures conforming to the required structural capability, but which are not certified or marked as conforming to TTMA RP No. 61-82. We agree with commenters that many unmarked manhole closures conform to this standard. Accordingly, we have revised proposed § 180.407. In those cases where the manufacturer of the manhole closure has identified and

certified a particular model or series of closures as conforming to TTMA RP No. 61-82, the owner of the cargo tank may certify and mark the manhole closure in conformance with this standard. Commenters pointed out that, in some cases, the manufacturer of the manhole closure may not be known, or the manufacturer may not be willing to certify that the closure is structurally capable of conforming to the industry standard. To address this problem TTMA proposed a static test procedure for evaluating the integrity of existing manhole closures which are not marked and certified to RP No. 61-82 by the manufacturer. The test procedure contained in TTMA Technical Bulletin (TB) No. 107 specifies a 15 psig hydrostatic test, which the manhole closure must withstand without any evidence of leakage or permanent deformation. TTMA has submitted data to support its position that a manhole closure which has been tested in this manner is structurally capable of withstanding the 36 psig test without leakage. We believe the test procedures contained in TTMA TB No. 107 will be adequate in verifying the leak-tightness of unmarked closures. Accordingly, we are authorizing unmarked manhole closures that have been successfully tested in conformance with TTMA Technical Bulletin No. 107 to be marked and certified as conforming to the applicable requirements as prescribed in the technical bulletin.

#### B. Inspection and Testing

The table in proposed § 180.407(c) containing the testing and inspection schedule for DOT specification cargo tanks is revised for clarity, as suggested by NTTC. The specific scheduling intervals are adopted essentially unchanged.

Several commenters addressed the qualification requirements for persons performing certain prescribed tests. Commenters objected to the proposal in § 180.407 requiring that the periodic pressure retest be performed by, or witnessed and certified by, an Authorized Inspector. Commenters argued that the cost for the use of an Authorized Inspector to witness or perform the pressure retest is not justified. Several commenters stated that performing a pressure retest requires less knowledge and skill than performing a thorough visual inspection. Several commenters also cited incidents to support their claims that their company employees are as knowledgeable and qualified, if not more so, than some Authorized Inspectors that they have employed. As



an alternative to the use of an Authorized Inspector, several commenters urged DOT to permit the periodic pressure retest and inspection to be performed by a "certified" inspector, e.g., a motor carrier employee with appropriate training and experience. The NTTC stated that such training should be specified by DOT and monitored by DOT and state enforcement agencies. Based on full consideration of the merits of these comments the periodic pressure retest may be performed by a qualified person who is registered with the Department under the procedures prescribed in § 180.409. We believe this change will allow more flexibility in the selection of qualified individuals.

Commenters also argued that, in proposed § 180.407(i), the use of persons qualified under the American Society for Nondestructive Testing (ASNT) Level II for ultrasonic testing for the required thickness tests is unnecessary. Commenters pointed out that a Level II Technician is qualified to perform ultrasonic examination for weld defects, a far more complicated procedure than a thickness measurement. We believe that this comment has merit and are requiring, instead of the Level II qualifications, that the tester be trained in the use of the particular thickness testing device, according to the instructions provided by the manufacturer of the device.

#### *C. Bottom Damage Protection—Wet Lines*

Bottom loading and unloading outlets on cargo tanks, although very useful, present the inherent risk that if damaged the entire contents of the tank may be released. To counteract this risk the tank outlet, outlet valve and piping are specifically designed to prevent damage to the outlet and outlet valves that would result in the loss of lading in an accident. The tank outlet and outlet valve are designed to be nearly flush with the surface of the tank. In addition, piping attached to the outlet valve is provided with a sacrificial device that is designed to break under accident loads and thereby prevent the piping from causing damage to the outlet valve or tank wall. Because such piping under the current regulation is not specifically a part of the product containment vessel and is designed to fail in an accident, RSPA's position is that piping between the tank outlet valve and any loading valves is not an appropriate packaging for the transportation of hazardous materials.

As a part of the implementation of the Clean Air Act (CAA), EPA required that cargo tanks used in areas operating

under EPA's State Implementation Plan for the CAA must be equipped with a vapor recovery system. The petroleum industry chose to use bottom loading in conjunction with tank top vapor recovery as their method of compliance with the CAA. All motor fuels must be metered for tax purposes. Unfortunately, in implementing this system the industry did not provide for a way to drain product from the cargo tank piping back into the loading facility and maintain proper accounting for tax purposes. As a result, cargo tanks are currently operated with gasoline in external piping that is designed to fail in an accident. The operation of cargo tanks with lading retained in external piping is generally limited to petroleum distillate fuels metered for road fuel tax purposes and transported in bottom loaded MC 306 type cargo tanks. The scope of these operations encompasses the vast majority of all gasoline transported.

RSPA strongly believes the practice of transporting hazardous materials in exposed unprotected piping designed to fail, if impacted in an accident, is an unnecessary risk. Currently this practice is generally limited to gasoline transportation; expansion of this practice to other segments of the cargo tank transportation industry particularly for material with inherent hazards greater than gasoline is unacceptable. Accordingly, RSPA proposed in the NPRM a prohibition on the transportation of hazardous materials in external piping unless the piping is protected by very substantial guards.

Commenters from the petroleum industry, represented by the American Petroleum Institute (API) and several large petroleum companies, argued that the need for bottom damage protection structures to protect piping containing lading is not justified. They argued that, based on statistical data showing the infrequency of accidents involving these lines, the relatively small amount of product exposed, and the integrity and operation of current self-closing valves, the loss of lading from piping is not a significant problem.

RSPA agrees that accidents resulting in damage to unprotected external piping carrying lading are infrequent, but the consequences of such accidents can be substantial, particularly if the material released has inherent hazards greater than that of gasoline. For this reason, we have adopted the proposal to clarify that, with the exception of gasoline, the transportation of hazardous materials in external unprotected piping is prohibited. For hazardous materials other than gasoline, transportation in external unprotected

piping is less common and thus the prohibition of such transportation will have a much lower cost impact. However, if the transportation of gasoline in external unprotected piping were prohibited, the impact on the petroleum industry could be substantial.

Although we have very serious concerns with the practice of transporting gasoline in external unprotected piping, we do not have sufficient data regarding incidents that can be attributed to the dislodging of piping to justify prohibiting the practice for gasoline at this time. Nor do we have adequate information concerning possible alternative procedures or equipment for accomplishing vapor recovery and road fuel tax metering, and the costs associated with these alternatives. Many of the potential cost effective ways to eliminate the risk associated with the transportation of gasoline in external unprotected line may entail alterations to the cargo tank piping, fixed loading and unloading equipment, or both. For these reasons we are excepting gasoline from the prohibition on the transportation of hazardous materials in external unprotected piping. However, we encourage the petroleum industry to consider the risk they accept in employing this practice, and work to eliminate it. We believe the petroleum industry is best positioned to consider and evaluate all the possible ways to eliminate this risk in the most cost effective manner.

The final rule contains a new provision, at § 173.33(e), which permits the retention of fuels in piping outboard of a shear section provided certain conditions are met. These conditions limit the inside diameter and aggregate volume of all unprotected piping on the cargo tank transporting hazardous materials. The intent of these provisions is to limit the quantity of lading transported and thereby limit the level of risk to current levels. These provisions in § 173.33(e) are limited to fuels metered for road fuel tax purposes. The retention of any other hazardous material in external unprotected piping is prohibited.

#### **IV. Use of Cargo Tanks**

##### *A. Gasoline—Design Pressure of Cargo Tanks*

Several commenters addressed the proposal in § 173.33(c) on the application of the design pressure formula to gasoline. (See discussion of § 173.33 later in this preamble). In its comments, the American Petroleum Institute (API) pointed out that gasoline



is a blend of organic chemicals which have seasonal variations to enhance the efficiency of motor vehicles. For the winter, gasoline is blended with a higher volatility (higher vapor pressure) to ensure engine start up; whereas for the summer, a lower volatility (lower vapor pressure) is blended to prevent vapor lock. As a result of this seasonal blending, gasoline typically marketed in the winter could not, under the proposal, be transported in the existing fleet of gasoline cargo tanks, because the proposed design pressure formula and reference temperature would require the use of a cargo tank having a design pressure exceeding that of the existing MC 306 cargo tank. API further states that in order to provide uniform automotive performance year-round, the majority of gasoline is blended and marketed in accordance with a consensus standard, ASTM D439, which would prevent winter gasoline from being shipped during periods of elevated temperatures approaching 115 °F. API asserts that use of this standard would achieve the same condition sought under proposed § 173.33(c). The concluding recommendation from API was that ASTM D439 should be adopted as the safety standard for the transportation of gasoline. This would be achieved by exempting gasoline generally conforming to ASTM D439 from the design pressure formula.

At a subsequent public meeting, API provided additional information to support its recommendation, including a listing of States with requirements similar to ASTM D439, results of a gasoline marketing survey, and calculations supporting their proposal. The gasoline marketing survey provided by API documented divergence from ASTM D439, and in some cases the maximum allowed Reid Vapor Pressure (RVP) specified in ASTM D439 for classes of gasoline were exceeded. Further, only a few States have regulations requiring compliance with the ASTM D439 standard. Two States even allow marketing of winter gasoline with RVP's greater than 16 psia, which is not authorized for transport in MC 306 cargo tanks nor is it in compliance with ASTM D439. Based on comments and information we have received on ASTM D439, it is clear that the standard: (a) is a marketing standard designed towards consumer's satisfaction with automotive performance; (b) is not a safety standard; and (c) is not widely recognized by States nor strictly followed by shippers of gasoline.

However, the general concept that winter gasoline should not be marketed in the summer forms the basis for our

modifying the proposed design pressure requirement (herein an MAWP requirement) for gasoline transported in cargo tanks equipped with a 1 psig normal vent. In this final rule, in order for a hazardous material to be transported in a cargo tank equipped with a 1 psig normal vent, the sum of the tank static head and 1 psig (the maximum vapor pressure exerted by the lading) must be less than or equal to the MAWP of the cargo tank. In addition, the vapor pressure of the lading at 115 °F must be no greater than 1 psig. An exception from the vapor pressure limit is granted for gasoline under certain circumstances. A maximum ambient and lading temperature table appears in § 173.119(a)(17)(iii) in the final rule. The table prescribes the maximum ambient and lading temperature for the transportation of each class of gasoline and generally recognizes ASTM D439, as was recommended by API. This table is derived from the ASTM D439 gasoline class definitions, API technical documentation for the conversion of Reid Vapor Pressure to normal vapor pressure, and a revision of the maximum allowable working pressure equation appearing in proposed § 173.33(c). The derivation process involved calculation of the maximum ambient temperature for each ASTM D439 class of gasoline that would not exceed a 1 psig pressure measured at the top of the tank. Pressures in excess of 1 psig will be relieved by the 1 psig normal vent, which vents predominantly air. (See discussion on § 178.346). While ensuring adequate pressure capability of the cargo tank for each class of gasoline, use of the table will not prevent the transportation of any gasoline blended in accordance with ASTM D439.

#### *B. Smaller Capacity Cargo Tanks in Flammable Liquid Service*

The NPRM contained a proposal to remove, at § 177.824(a), an exception for cargo tanks with a capacity of 3,000 gallons or less used exclusively in flammable liquid service from inspection and periodic retest requirements. Most of these are MC 306 type cargo tanks. Comments from the petroleum marketing industry (i.e., distributors of gasoline, fuels and other petroleum products), took strong exception to the proposal. Many commenters supported the comments filed by the Petroleum Marketers Association of America (PMAA). PMAA stated, in part:

Contrary to DOT's assertion, these smaller vehicles are not "operated under similar conditions, and operated over the same roads \* \* \* as typical 4000 to 8000 gallon cargo tanks motor vehicles." Rather, these

smaller vehicles are generally used in less populated, and therefore, less exposed, rural areas to deliver product intrastate to small accounts with an average tank capacity of between 500-1000 gallons.

While PMAA agrees that "periodic maintenance, inspection and retesting of any vehicle transporting hazardous material must be an integral part of any responsible operator's safety management program," DOT offers no evidence to show that owners of these vehicles do not already engage in periodic maintenance or that these vehicles present a hazard to the public. These vehicles are already subject to state regulations and local ordinance designed to meet community safety concerns, some of which may be more stringent than federal requirements.

\* \* \* Elimination of the small vehicle exemption will subject small business marketers to dual, and perhaps triple, regulation under federal, state and local requirements. Compliance with several layers of regulations will make it impractical, if not impossible for these small businesses to continue to supply the farm and bulk end user accounts solely dependent upon the largely rural network of marketers for their petroleum requirements.

RSPA acknowledges that information is not readily available on the type of periodic maintenance being performed by owners of these smaller cargo tanks. Several commenters asserted that they already perform periodic maintenance and inspection of their smaller cargo tanks and, therefore, the proposal to subject these vehicles to periodic inspections is unnecessary. One commenter asserted that their vehicles are inspected annually by State fire marshals and, therefore, the exception should be retained. However, we believe that few State and local agencies have enacted regulations governing the maintenance and testing of smaller cargo tanks. We find that many States have adopted or incorporated the HMR as a part of their laws, including the exception granted for smaller cargo tanks operating exclusively in flammable liquid service.

We believe that a cargo tank containing 3000 gallons of a flammable liquid presents a significant risk to the public. Furthermore, we believe that citizens in rural as well as urban areas must be provided protection from that risk. Many state public safety representatives have supported this proposal. The proposed requirement that the retest be performed or witnessed by an Authorized Inspector, as discussed earlier in this preamble, is not adopted in this final rule. Similarly, the proposal to require all repairs to pressure parts on cargo tanks be performed or witnessed by an Authorized Inspector is not adopted in this final rule. These changes will alleviate commenters'



concerns regarding potential cost increases in those areas. We believe that if the commenters' assertions that periodic maintenance, inspections, and repairs are presently being performed on these tanks are true, there should be minimal incremental costs to small businesses. The final rule contains requirements for the periodic maintenance, inspection, and retest of all cargo tanks.

#### V. Impact of this Rulemaking on Existing Exemptions

A number of cargo tanks are being operated under exemption. It is our intention that, to the maximum extent appropriate, existing cargo tanks authorized for use under an outstanding exemption be covered under this rule, thereby eliminating the need for the exemption. It is our position, however, that in order to be re-marked as a specification cargo tank, an existing cargo tank must, as a minimum, meet the basic provisions in this rule.

Accordingly, each owner or manufacturer of a cargo tank which is used in the transportation of liquid hazardous materials should examine the tank and the tank drawings to determine if the cargo tank meets the requirements of the applicable MC 306, MC 307 or MC 312 cargo tank specification in effect at the time of manufacture and the conditions prescribed in the applicable DOT exemption. The owner of a cargo tank meeting the applicable requirements should remove the DOT exemption number stenciled on the cargo tank and mark the identification plate (or a plate placed adjacent to the specification plate) as adjacent by § 180.407(f)(6) according to the applicable specification. A copy of the exemption in effect at the time the cargo tank is remarked must be retained on file at the owner's principal place of business during the period the cargo tank is in service, and for at least one year thereafter. DOT exemptions that may be affected by this rulemaking are as follows:

#### Hazardous waste tanks

3095	8640
5701	8706
6325	8742
7476	8751
7948	8761
8213	8822
8269	8844
8337	8904
8348	9143
8408	9463
8426	9486
8478	9512
8518	9515
8549	9536
8551	9543
8552	9568
8620	

#### VI. Delayed Effective Dates

Delayed effective dates are found in the following sections to provide for a smooth transition from the existing requirements to the new requirements:

1. Section 180.405—Authorizes the construction of DOT Specification MC 306, MC 307 and MC 312 cargo tanks conforming to the applicable specification requirements in effect on June 12, 1989 until December 12, 1990.

2. Section 180.413—Authorizes the repair of DOT Specification MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks, and non ASME MC 304, MC 307, MC 310, MC 311 and MC 312 cargo tanks by persons who do not presently hold an ASME or National Board Certificate of Authorization until December 12, 1990.

3. Section 180.405(g)—Allows owners of existing cargo tanks with manhole assemblies not meeting the requirements of § 178.345-5 until June 13, 1994 to retrofit the manhole assemblies.

4. Sections 178.345-10 and 180.405(h)—Require that after June 12, 1991 any reclosing pressure relief valve installed on a cargo tank must be capable of reseating to a leak-tight condition.

5. Section 178.345-10—Requires that each pressure relief system on a DOT Specification 406, 407 or 412 cargo tank be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid regardless of vehicle orientation after June 13, 1994.

#### Review by Section

Readers are reminded that this review by section discusses only significant comments on the proposals in the NPRM and changes made to the NPRM in this Final Rule. For those provisions that are unchanged, readers are referred to the preamble discussion in the original NPRM (50 FR 37766) and subsequent correction document (50 FR 49866).

Sections 107.501-107.504. These new sections contain registration requirements for persons engaged in the manufacture, assembly, certification, inspection or repair of DOT specification cargo tanks or cargo tank motor vehicles, and cargo tanks manufactured under exemption. Section 107.502 contains general registration requirements applicable to manufacturers, assemblers, repair facilities, and other persons who perform the specified functions. Section 107.503 contains information on completing a registration statement. This section also grants an exception from requirements for an ASME Certificate of Authorization for

assemblers of cargo tanks who perform no welding on the cargo tank wall.

Section 107.504 contains provisions on required documentation, required updates of registration information, and procedures for renewal. See earlier discussion in this preamble under the heading "Cargo tank; Manufacturer Qualification, Registration, Quality Control, and Certification."

Section 171.3. Proposed § 171.3(f)(1) would have authorized the continued use of nonspecification cargo tank motor vehicles for transportation of hazardous wastes in intrastate commerce under certain conditions. Upon further consideration, we realized that these tanks, which are not under exemption, are used only to transport waste materials that do not require the use of a DOT specification cargo tank. Therefore, the proposed provision is unnecessary and is not adopted in this rule.

Section 171.7. Several commenters requested that matter incorporated by reference not be identified by a specific edition number or date. The commenters stated that the absence of dated material would allow persons to use the most recently published edition of incorporated standards without delay and would eliminate the need for RSPA to publish periodic updates of incorporated matter in the Federal Register. The Director of the Federal Register (OFR) has the responsibility for approval of materials incorporated by reference into the Federal Register. Thus, OFR regulations require an agency that seeks approval for a change to a publication that is approved for incorporation by reference must publish notice of the change in the Federal Register and amend the Code of Federal Regulations. The language incorporating a publication by reference must state the title, date, edition, author, publisher, and identification number of the publication. See approval procedures for incorporation by reference in 1 CFR Part 51.

The proposed changes to reflect the new address of the American Welding Society (AWS), to revise the reference numbering of the AWS Code, and to incorporate the latest editions of the American Boiler and Pressure Vessel Code and CGA Technical Bulletin TB-2 were handled in other separate rulemaking actions.

The change to incorporate the Rubber Manufacturers Association (RMA) Technical Bulletin 13 is not adopted. The provisions contained in RMA Technical Bulletin 13 that were to be referenced are brief and, thus, are adopted in the rule. Also the change to incorporate the



American Society for Nondestructive Testing Standard for use by persons who perform ultrasonic thickness testing on cargo tanks is not adopted in this rule. See preamble discussion to § 180.409.

**Section 171.8.** The definitions for "Authorized Inspector," "Authorized Inspection Agency," and "Cargo tank motor vehicle," are adopted as proposed. The proposed definition for "cargo tank" as a tank with a capacity of over 110 gallons is revised to provide consistency with the definition of a "bulk packaging." A bulk packaging is defined in § 171.8 to mean a packaging with a capacity of greater than 118.9 gallons if used for a liquid. Since a cargo tank is considered a bulk packaging, this change eliminates discrepancies between the two definitions for tanks with a capacity between 110 gallons and 118.9 gallons. In addition, in the cargo tank definition, references are added to refer to the definitions of "tank" appearing in the MC 331 and MC 338 cargo tank specifications, in §§ 178.337-1 and 178.338-1, respectively, and new definitions are added for "Registered Inspector" and "Design certifying engineer."

**Section 172.203.** Paragraph (h) is amended to correct references to provisions contained in § 173.315.

**Section 173.33.** Proposed paragraph (a)(2) is revised, as suggested by NTTC and the Chemical Manufacturers Association (CMA), to make both the shipper and the carrier responsible for ensuring the compatibility of materials that are offered or loaded for transportation in a cargo tank motor vehicle. The CMA stated, "For customer pickup shipments, where a cargo tank in a multi-compartmental motor vehicle already contains a material when arriving at a shipper's facility, it should be the responsibility of the receiver (motor carrier) to ensure that mixture of the materials will not create an unsafe condition. A shipper may not be familiar with the characteristics of the chemical which is already contained in one or more of the cargo tanks in a multi-compartmental vehicle." RSPA agrees with the commenters that, in a case where a motor carrier receives hazardous materials from different shippers, the responsibility for ensuring an unsafe condition is not generated, should be a shared responsibility and not the exclusive responsibility of the shipper or the carrier. Accordingly, paragraph (a)(2) has been revised to provide that "two or more materials may not be loaded or accepted for transportation. . . ."

Proposed paragraphs (b) (1) and (2) are revised to clarify that a cargo tank

may not be loaded with any hazardous materials that may produce an unsafe condition.

A commenter objected to proposed paragraph (b)(4) which would require that the rate used to load or unload a cargo tank be less than or equal to the rate marked on the cargo tank specification plate. The commenter stated that a proposed requirement would have no effect if the manhole is open or if the closed system is protected by the pressure relief devices. We do not agree with the commenter. The use of a loading rate exceeding the maximum loading rate may lead to possible over pressurization and tank rupture in addition to leakage of lading through relief valves. In addition, we have revised proposed paragraph (b)(4) to specify the maximum pressure that may be used during loading and unloading when the loading/unloading rate is not marked on the cargo tank specification plate.

Proposed paragraph (c) would have required that prior to filling and offering a hazardous material for transportation, a shipper must confirm that the design pressure of the cargo tank is greater than or equal to 120 percent of the sum of the vapor pressure of the lading at 115 °F, the tank static head exerted by the lading, and any pressure exerted by the gas padding, including air, in the ullage space or dome. As is discussed later in this preamble (see discussion of § 178.345-1), the term "maximum allowable working pressure" (MAWP) has replaced the term "design pressure" in this final rule. The term MAWP will be used for the remainder of this discussion for consistency with the final rule. Commenters argued that the proposed formula is too restrictive, and would require a higher MAWP than is necessary for the commodity to be shipped, particularly for gasoline shipped in MC 306-type cargo tanks. These commenters suggested that either the safety factor of 1.2 or the vapor pressure reference temperature be reduced in order to present a more realistic approach. Additionally, commenters pointed out that the ASME Code provides a 4 to 1 factor of safety in the structural design of cargo tanks, eliminating the need for an additional safety factor in the MAWP equation.

We agree that a cargo tank constructed to the ASME Code or to the HMR is structurally designed with a substantial factor of safety. We are also aware that the use of a vapor pressure reference temperature of 115 °F is the extreme of what is experienced in normal transportation. However, we are concerned about the possible loss of hazardous materials lading from a cargo

tank involved in an accident involving a rollover. Under proposed § 178.340-10, safety relief valves would be set at the MAWP, and reclose at 90% of the set pressure. We believe that a safety factor must be included to ensure that the static head and vapor pressure of the lading, in addition to any gas padding in the tank, do not cause the relief valves to open in a rollover situation, and release product continuously without reseating.

The intent of the NPRM was to link the properties of the lading to the structural design of the tank and to the relief device settings. Our primary concern in relating a potential lading to the cargo tank MAWP is in the settings of the pressure relief valves, as discussed above, since an adequate factor of safety is included in the structural design of the tank itself. As a result of the written comments received and the public meetings held, we have modified the maximum allowable working pressure requirements in the final rule. This final rule requires an MAWP greater than or equal to 100 percent of the sum of the vapor pressure of the lading at 115 °F, plus the tank static head of the lading, plus the pressure exerted by any gas padding. The 20 percent safety cushion has been removed from the calculation of the MAWP where it results in increased wall thickness; but it has been retained in the pressure relief valve settings. The final rule requires that the primary pressure relief valve setting be no less than 120 percent of the MAWP of the tank, determined as described above.

It was not our intention in proposed paragraph (c) to change the existing pressure relief and venting requirements of cargo tanks used to transport compressed gases, including cryogenic liquids. This error has been corrected in the final rule.

Proposed paragraph (c)(4) would have required the use of a cargo tank motor vehicle having a design pressure of 25 psig or higher for any material that meets the definition of more than one hazard class. It was our intent in the NPRM to require a higher integrity tank for dual hazard materials, and to specifically exclude the MC 306 cargo tank from use in transporting flammable liquids that also meet the definition of a corrosive. However, the proposal would also have excluded MC 312 cargo tanks in the pressure range of 15-25 psig. Some commenters questioned the necessity of the required minimum pressure for low vapor pressure, high flash point (such as UN Packaging Group III) materials, while other commenters expressed support for the



proposed change. This proposal has not been adopted in this final rule. However, it will be given further consideration under a separate rulemaking action (Docket HM-181).

The NPRM contained proposals to standardize certain commodity requirements and eliminate several discrepancies in the requirements for transporting certain kinds of commodities in DOT specification cargo tanks. For example, it was proposed to require that all cargo tanks used to transport poisonous materials have a design pressure of 25 psig and to prohibit the use of non-reclosing pressure relief devices (except when in series with a reclosing relief valve) on cargo tanks transporting flammable liquids. The NPRM was not intended to be an extensive review and possible reclassification of those hazardous materials authorized to be shipped in cargo tanks.

On May 5, 1987, RSPA published a notice of proposed rulemaking under Docket HM-181, entitled "Performance-Oriented Packaging Standards; Miscellaneous Proposals". Among other things, the proposal called for the adoption of an internationally recognized classification system for hazardous materials and the placement of hazardous materials into groups of bulk packagings which provide equivalent levels of packaging integrity. The present packaging sections for the bulk transportation of hazardous materials were adopted on a piecemeal basis over the years. In some sections, materials with similar transportation hazards are not authorized in similar bulk packagings due to oversight or because the industry did not petition the DOT to authorize them. Specifically, the proposal would allow a hazardous material that can safely be carried in one type of cargo tank to be carried in all cargo tanks of similar or greater integrity. Additionally, the proposal would require bulk packagings of much greater integrity than presently required for materials that are toxic by inhalation. This final rule does not address any of the issues raised in Docket HM-181.

For the above stated reason, RSPA has not accepted a commenter's recommendation that a new provision be added to provide that whenever an MC 300, MC 301, MC 302, MC 305 or MC 306 cargo tank is authorized, the use of an MC 307, MC 312 or MC 331 cargo tank having an equal or higher marked design pressure be authorized. The use of a higher integrity tank in place of a currently authorized specification tank is being considered under a separate

rulemaking (Docket HM-181) and, therefore, has not been made a part of this final rule. The public and regulated industry should be aware that the final rule promulgated under Docket HM-181 might have significant impact on commodities authorized to be transported in DOT specification cargo tanks in the future.

*Section 173.119.* For discussion of the substantive changes affecting this section, refer to the preamble discussions under the heading "Use of Cargo Tank" and the discussion of changes to § 178.346.

*Sections 173.135 and 173.136.* A commenter suggested that transportation safety could be enhanced by authorizing only MC 330 and MC 331 cargo tanks for use in transporting the named chlorosilanes under this section. This same commenter requested that RSPA amend the provisions in this section to provide for the transportation of dimethyl chlorosilane in MC 330 and MC 331 cargo tanks. The commenter presented no data to support these more restrictive provisions nor is RSPA aware of any problems with the use of the cargo tanks authorized. RSPA will give this matter further consideration should information be received to support the change.

*Section 173.154.* A provision is added in proposed paragraph (a)(4) to specify the requirements for pressure relief devices on MC 310, MC 311, MC 312 and DOT 412 cargo tanks, which was inadvertently omitted from this section.

*Section 173.240.* NTTC recommended that RSPA amend § 173.240 by revising the definition of a "corrosive material" and the test requirements. NTTC stated, in part:

We believe that the regulatory testing of "corrosive materials" (at Section 173.240) must be changed. It bears little relevance to transportation practices; has been outdated by contemporary testing and analytical technology; and has [led] to premature deterioration of even newly-manufactured cargo tanks.

The current mandated tests allow the manufacturer of a corrosive to test under one set of circumstances and then offer the product for transportation under another. For example, the manufacturer may conduct the corrosive test with a product at a temperature of 70 degrees F. at a specified concentration while loading it aboard a cargo tank at 95 degrees F. and at a significantly different concentration. Metallurgists inform us that chemicals may be substantially more aggressive to tank parent and weld metal at a higher temperature. Such would accelerate internal corrosion, pitting, and (particularly) intergranular cracking.

Although NTTC's recommendation has merit, the suggested corrosive material definition and test criteria are beyond

the scope of this rule making and, therefore, has not been made a part of this rule. However, this matter may be considered under a rulemaking action in the future.

*Section 173.247.* A commenter requested a revision to authorize silicon chloride for transportation under § 173.280 instead of § 173.247. The commenter stated that this change would simplify the HMR and enhance safety. In the comments made to § 178.280, the commenter suggested that RSPA change the section heading from "Trichlorosilanes" to "Nonflammable Chlorosilanes (including silicon chloride)". The commenter stated that this change would provide for these chemicals to be more rationally grouped for appropriate packaging in MC 330 and MC 331 cargo tanks. The commenter provided no reason for this more restrictive provision. Without data to support these changes, no action has been taken under this final rule.

*Section 173.252.* A commenter disagreed with the clarification contained in proposed paragraph (a)(4) stating that the prescribed  $\frac{3}{8}$  inch minimum thickness for the tank shell and head excludes any lining, cladding or corrosion allowance. The commenter stated that the existing regulations required that each tank must have a head and shell thickness of at least  $\frac{3}{8}$  inch and a nickel cladding on the inside surface comprising at least 20 percent of the total thickness. RSPA also received a letter requesting clarification of the provision. In the reply, RSPA agreed that (1) where cladding is required by § 173.252(a)(4), the thickness of the cladding is based on a percentage of the minimum calculated shell thickness rather than the as-built thickness if the shell is thicker than required, and (2) the word "shell" as mentioned in § 173.252(a)(4) means the total thickness of steel plus nickel. In any case the steel portion of the composite shell must conform to the material, minimum thickness and structural integrity requirements of the applicable cargo tank specification. The composite steel/nickel plate must conform to the requirements of ASTM specification A-265-69. The final rule has been revised consistent with this clarification.

*Section 173.264.* In the NPRM, RSPA proposed to include a provision found in Note 1 to paragraph (a)(14) that authorized inhibited hydrofluoric acid solution of 60 percent to 65 percent concentrations in unlined cargo tanks. A commenter stated that 60 percent to 65 percent hydrofluoric acid is no longer being produced and, therefore, continuing to grant the provision is



unnecessary. The commenter also pointed out that the Manufacturing Chemists Association had filed a petition (P-440) seeking removal of the provision. Although not a part of the proposal, RSPA believes the request has merit and it is adopted in paragraph (a)(14) of this final rule.

The commenter also requested that we prohibit the use of bottom outlets on cargo tanks authorized under this section and § 173.265(a)(4). The commenter presented no data to support this change. RSPA is not aware of any safety problems with the use of bottom outlets on cargo tanks authorized under this section. In the absence of data to support the change, no action is being taken at this time.

**Section 173.265.** The proposed change to paragraph (a)(4) is corrected to apply to paragraph (b)(4) in the final rule.

**Section 173.266.** Proposed paragraph (r)(2) would have removed a provision that designs for venting and pressure relief devices be examined by the Bureau of Explosives and approved by the Director, OHMT. A commenter requested that the provision be retained to keep the continuous vent arrangement. RSPA did not intend to remove this provision and this proposal has not been adopted.

**Section 173.273.** A commenter stated that the wording "and consisting of a spring-loaded pressure relief valve" in proposed paragraph (a)(5)(i) implies that a frangible disc in series is prohibited. The commenter stated that the use of a frangible disc should be allowed to protect the spring-loaded valve and to provide additional containment. As an alternative, the commenter requested that the wording be removed, as proposed § 178.340-10 (§ 178.345-10 as adopted herein) requires the use of a spring-loaded pressure relief valve and allows the use of a frangible disc in series. We agree with the commenter and have revised paragraph (a)(5) accordingly. We have also revised proposed paragraph (b)(2)(iii) to allow the setting of a spring-loaded valve in series with a frangible disc at 125 percent of design pressure instead of 150 percent of design pressure.

**Section 173.315.** Paragraph (i) is revised to permit safety relief valves to be certified by the valve manufacturer in place of an Authorized Inspector.

Existing § 173.33(k), which requires that MC 330 cargo tanks used to transport certain gases be equipped with liquid discharge controls conforming to § 178.337-11(c) at each liquid discharge opening, would have been removed and placed in new paragraph (n) of this section. Proposed paragraph (n) would have required that each vapor or liquid

discharge opening on MC 330 and MC 331 cargo tanks be equipped as prescribed in proposed § 178.337-11. Several commenters expressed concern that, as proposed, these tanks would have to be retrofitted with internal valves on the vapor openings. It was not our intention to make any substantive change in the specification requirements for these tanks. Accordingly, the reference to the vapor discharge opening is removed.

**Section 173.318.** Consistent with other changes to the final rule and the reformatting of this section under a separate rulemaking, paragraphs (b)(2)(i) and (ii) are revised to require that the flow capacity and rating of pressure relief devices be verified and certified by the manufacturer of the device.

**Section 173.346.** A commenter requested a revision of proposed paragraph (a)(12) to authorize the continued use of a MC 306 cargo tank with a capacity of 3,000 gallons or less when operated by private carrier to transport formulated agricultural chemicals meeting the definition of Poison B. The transportation of Poison B materials was discussed in the preamble of the NPRM, and requires a cargo tank with a MAWP of 25 psig. We believe an MC 306 cargo tank is not adequate for the transportation of Poison B n.o.s. materials. Therefore, the final rule is adopted as proposed.

**Sections 177.801 and 177.802.** Section 177.801 is revised for clarity. After further consideration, we believe the provisions concerning the inspection of carrier facilities and records in proposed § 177.802(a), (b) and (c) are redundant. The provisions contained in paragraph (a) are adopted in this rule.

We proposed that the reporting and recordkeeping requirements presently found in § 177.824 be relocated to § 180.417. However, the provision in § 177.824(f) requiring motor carriers to file a report with FHWA listing all MC 330 or MC 331 cargo tanks in service, or being placed in or removed from service, was not included or discussed in the proposed rule. In the NPRM, the present requirement that motor carriers operating an MC 330 or MC 331 cargo tank in anhydrous ammonia service must complete a written report after testing and inspection was expanded to include cargo tanks motor vehicles operating in liquefied petroleum gas or any other service that may cause stress corrosion cracking of the tank. Therefore, we believe the reporting requirements appearing in present § 177.824(f) are no longer necessary, and they are not included in this final rule.

**Section 178.320 General requirements applicable to all DOT specification cargo tanks.** This new section contains general provisions pertaining to all DOT specification cargo tanks, including those used for compressed gases. Included are definitions of "manufacturer" and "design type."

As is discussed elsewhere in this document, the requirement that all cargo tanks be constructed and certified in conformance with the ASME Code is not adopted in this final rule. Independent inspection and certification of cargo tank design and construction by an Authorized Inspector is not required. The absence of independent review of each cargo tank by an Authorized Inspector has made necessary a new provision in § 178.320 which requires each design type (as defined in this section) be certified by a "Design Certifying Engineer" (as defined in § 171.8). Design certification by a qualified individual will ensure the integrity of a cargo tank design without requiring independent design review of each individual cargo tank.

**Sections 178.337-3 and 178.338-3.** Commenters emphasized that the NPRM proposed parameters for the determination of structural integrity would require cargo tanks with walls up to 25% thicker than presently required. The intent was not to increase the minimum wall thickness requirements. The parameters in this final rule are as follows:

**For MC 331 cargo tanks.** The stress values used are the same as that suggested in our research findings and recommendations. Further, for the dynamic pressure condition resulting from a deceleration of 2 g's in combination with the MAWP, the design stress value used for wall thickness calculations will be the lesser of the tank material's yield strength or 75 percent of the ultimate tensile strength of the material.

**For MC 338 cargo tanks.** The stress values used will be the same as that proposed for the MC 331, except that the "g" loads used will be those found in § 178.338-13.

In § 178.337-3(d), a requirement which was inadvertently omitted would be restored as paragraph (3).

**Section 178.345-1 (proposed § 178.340-1) General Requirements.** Several commenters objected to the use of the term "design pressure" throughout the general sections as well as in sections containing the individual cargo tank specifications. These commenters, including TTMA and the Fruehauf Corporation, suggested that the term



"maximum allowable working pressure (MAWP)" should be used. Commenters, at the public meetings held between the DOT and commenters, argued that an MC 306 cargo tank (DOT 406 herein), which is generally an oval cross-section tank not constructed in accordance with the ASME Code, is not "designed" through a series of calculations. Rather, the integrity of an MC 306 cargo tank is verified by hydrostatic test, and the use of the term "design pressure" for the MC 306 cargo tank is inaccurate. Further, commenters stated that use of the term "MAWP" maintains consistency with the ASME Code. It should be noted that the ASME Code uses both the terms "design pressure" and "MAWP." However, it is the MAWP which is used in the general structural design and pressure rating of the tank.

We understand cargo tank manufacturers' reluctance to use the term "design pressure," which is the term used in the existing cargo tank specification. Accordingly, the term "MAWP" is used in the final rule in place of the term "design pressure." The MAWP is the pressure used in the design of the cargo tank in the ASME Code and the individual cargo tank specifications. However, a shipper still must determine that the MAWP of a particular cargo tank is appropriate for the shipment of a commodity, as required by § 173.33.

*Section 178.345-2 (proposed § 178.340-2) Material and material thickness.*

Several commenters requested, in addition to materials conforming to Section II, Parts A and B of the ASME Code, that materials conforming to ASTM standards be authorized for the construction of DOT specification cargo tanks. Specifically, TTMA listed two ASTM steel specifications, A676 and A715, and several aluminum alloy specifications for consideration. The aluminum alloy specifications that were listed are authorized in the HMR, and are suitable for use. We believe the two ASTM steel specifications are also suitable for use. Therefore, we have authorized those materials as well.

Commenters objected to a proposal to use a formula in place of the tables appearing in the current regulations to determine the minimum required thickness of a cargo tank shell or head. Commenters argued that it is easier to verify compliance with the specification requirements through the use of a table. TTMA, in its comments, requested that the thickness tables be retained in the individual specifications, with certain changes such as specifying the thickness by the use of decimals in place of fractions of inches or gauge

designations. TTMA's revised thickness tables were derived based on the knowledge and experience of the cargo tank manufacturers in its membership, rather than on specific calculations based on anticipated stress levels.

We agree that the minimum thickness tables are easier to use than a formula. The use of minimum thickness tables can also prevent unusual situations such as a cargo tank designed with a very thin shell, but with enough ring stiffeners to meet the maximum allowable stress level requirements. However, we believe that the minimum required thickness of a cargo tank shell or head must take into account the maximum allowable stress levels. We found that the thicknesses in the tables presented by TTMA were generally adequate only to accommodate the stresses due to internal pressure. Consequently, the minimum thickness tables are being retained in the individual specifications; however, the values appearing in these tables must be replaced by the results of the stress calculations of § 178.345-3 if those calculations require a greater thickness. The tables, which are revisions of the tables developed by TTMA, have been greatly simplified, and the thickness tables for the DOT 412 cargo tank are expanded to include product densities of 16 to 26 pounds per gallon. The minimum thicknesses for cargo tank shells and heads listed in the tables are equal to or somewhat greater than those listed in the current regulations.

*Section 178.345-3 (proposed § 178.340-3) Structural integrity.*

The principal comments received on the structural integrity requirements came from the TTMA and its members. In addition to written comments, several public working meetings were held between representatives of the DOT and TTMA. TTMA agreed that provisions for structural integrity based on g-loadings were needed for low pressure cargo tanks. However, they stated that the proposed g-loadings were too great. Commenters argued that, although the preamble to the NPRM specifically stated that no increases in the shell thickness of cargo tanks were intended by the rulemaking, the proposed g-loadings would nearly double the required shell and head thicknesses. The g-loadings recommended by TTMA were: 1.7-g vertical, based on vertical road shocks and ANSI recommendations; and 0.75-g longitudinal, based on the maximum expected deceleration. TTMA also stated that a realistic lateral force would be 0.4-g, which research has proven is the force necessary to cause overturn.

The proposed g-loadings are the same as those specified for the MC 330 and MC 331 cargo tanks, since all cargo tanks experience the same over-the-road loading conditions. Commenters stated that the g-loadings for those high pressure cargo tanks were set artificially high in order to add more thickness to the tanks, and that the loadings recommended by the commenters have worked successfully for many years. Further, commenters pointed out that the ASME design requirements already include a 4 to 1 factor of safety. We agree that the g-loadings recommended by TTMA, combined with the factor of safety required by the ASME Code, will ensure that cargo tanks are designed with adequate structural integrity. These loadings of 1.7-g vertical, 0.75-g longitudinal, and 0.4-g lateral are adopted in this final rule.

With regards to the evaluation of specific stresses, TTMA opposed the proposed requirement to include, in the design of heads and shell, the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g." TTMA stated that such a requirement would eliminate oval cross section tanks, and that the tank would not experience this type of loading in normal transportation. This requirement was proposed in order to account for accident conditions in which such loadings could occur. However, we believe that since this load combination would only occur during an accident situation, and would not ordinarily be experienced in transportation, a lower factor of safety, and a higher allowable stress could be allowed in the design for the loading. Therefore, in the final rule, the MAWP in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g" may not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction.

TTMA further stated that the shear stresses described in proposed § 178.340-3(b) (6), (7), and (8) need not be calculated or taken into account, since the effective stress calculated by the formula in proposed § 178.340-3(c) (§ 178.345-3(c) herein) is governed by the tensile and compressive stresses described in paragraphs (1), (2), (3), and (5). TTMA stated that the calculated shear stresses are much lower than the tensile and compressive stresses. Additionally, TTMA and other commenters pointed out that a calculation of the tensile or compressive stress resulting from accelerative and decelerative forces applied at the



horizontal pivot of the fifth wheel, as described in proposed § 178.345-3(b)(4), is unnecessary, as this result will not exceed that calculated under proposed paragraph (b)(3). We agree that in most cases, the stress levels will be largely governed by the tensile and compressive stresses. However, since shear stresses in addition to accelerative and decelerative forces at the fifth wheel, are also experienced by the cargo tank motor vehicle in transportation, we believe that they must be evaluated as part of the design.

**Section 178.345-5 (proposed § 178.340-5) Manhole Assemblies.** Commenters objected to the proposed requirement that manhole closures be capable of withstanding, without leakage or permanent deformation, static internal fluid pressure of 36 psig or test pressure, whichever is greater. These commenters recommended that we should allow de minimis leakage and deformation that does not affect the structural integrity of the closures. Commenters stated that if deformation of the tank were allowed, then manhole assemblies conforming to the industry consensus standard TTMA RP No. 61-82 could be used. We believe that a leak-tight condition is necessary. To allow a certain amount of leakage would open the question of how much leakage is acceptable, and how that amount of leakage can be accurately measured. However, we believe that to allow deformation that does not affect the structural integrity of the cargo tank should not adversely affect safety. TTMA has developed a revised RP, No. 61-89, which specifies no leakage, but allows some deformation. The revised standard also contains a requirement for testing every 3 months, one percent (or one manhole closure, whichever is greater) of all manhole closures of each type produced to verify compliance with this requirement. Provisions consistent with those found in revised TTMA RP No. 61-89 are being adopted for use in § 178.345-5 in this final rule.

**Section 178.345-7 (proposed § 178.340-7) Circumferential reinforcements.** The proposal would have required that all ring stiffeners conform to the ASME Code. Several commenters pointed out that the ASME Code requirements for ring stiffeners apply only to tanks under external pressure. We agree with the commenters that the ASME Code does not address ring stiffeners for tanks under internal pressure. Therefore, the existing requirements for ring stiffeners are retained under this final rule. This rule also allows ring stiffeners to be placed farther apart than 60 inches for vacuum-loaded tanks under certain conditions.

The NPRM contained a proposal to prohibit the use of hat shaped or open channel rings precluding visual inspection of the tank shell. Most commenters agreed that hat shaped or open channel rings should be prohibited on cargo tanks constructed of carbon steel which are used to transport corrosive materials, but did not believe that such rings should be prohibited on cargo tanks constructed of other materials or transporting other than corrosive materials. They argued that the proposal would require the use of "T" rings which are more susceptible to damage in a rollover accident where skidding is involved. They further stated that "T" rings create higher concentrated stress on the tank shell, which could lead to tearing of the shell and catastrophic loss of lading. We believe that this comment has merit; however, we do not agree that the prohibition against hat shaped or open channel rings should be limited to cargo tanks carrying corrosive material. We are aware of several accidents in which a cargo tank failed due to corrosion of the tank shell underneath a reinforcement ring, where such corrosion was caused externally by environmental elements rather than by the hazardous materials lading. Therefore, this final rule prohibits, on any cargo tank constructed of carbon steel, hat shaped or open channel rings which preclude visual inspection of the tank shell.

**Section 178.345-8 (proposed § 178.340-8) Accident Damage Protection.** The National Transportation Safety Board (NTSB), in its comments to the docket, supported the requirement in proposed 178.340-8(a) for accident damage protection for projections from the cargo tank shell. However, the NTSB stated that all projections from the cargo tank should be subject to the accident damage protection requirements, not just those extending more than 2 inches from the tank shell. NTSB stated, in part:

While we believe it is the intent of the NPRM to protect all projections from rollover damage, even if they protrude less than two inches, the language used in § 178.340-8 (a) and (c) is not entirely clear in that respect. The Safety Board believes that the proposed rule should indicate unequivocally that all protrusions should have rollover protection.

The NTSB cited an accident which occurred near Springville, Alabama, and involved the spillage of 3,000 gallons of a Poison B liquid from an overturned cargo tank. The spill occurred because two 3-inch diameter washout pipes, projecting about 3 inches above the ring stiffeners, were torn away from the tank

shell. These pipes were not protected by accident damage protection devices.

In contrast, TTMA commented that 2 inches from the tank was not adequate for most washouts and sumps. They stated that currently most sumps extend 4 inches from the tank and experience has shown little accident damage on such devices. TTMA requested that an exception from the accident damage protection requirements be granted for those projections which extend less than ½ their diameter and less than 4 inches from the tank shell.

It was our intention in the NPRM to provide an exception from the accident damage protection requirements for domes, sumps, and washout cover plates which have a relatively large diameter compared to their height and, therefore, are not likely to be torn from the cargo tank shell in a rollover accident on the roadway. Accordingly, we proposed an exception from the accident damage protection requirements for projections from the cargo tank which are of a material of a toughness equivalent to that of the tank shell and which extend not more than 2 inches from the tank shell. It was not our intent to except smaller diameter pipes, or projections whose diameter is smaller than the projection from the tank shell, from the accident damage protection requirements.

Upon consideration of both comments, we have clarified this section in the final rule. Proposed § 178.340-8(a)(1) (§ 178.345-2(a)(1) herein) has been revised to clarify that it applies specifically to domes, sumps, and washout cover plates, and that in order for these components to be excepted from the accident damage protection requirements, they must be of a strength, toughness, and thickness equal to the cargo tank shell thickness. In consideration of NTSB's comment, we believe that damage to projections from the tank is most likely to occur on the upper two thirds of the tank. Experience has shown that damage to large-diameter low-profile projections is very rare. We have clarified our proposal by adding a requirement that for the top ⅔ of the tank a projection may extend no more than 2 inches or ¼ its diameter from the tank without protection. Thus, a 2 inch high projection must be no less than 8 inches in diameter. For the bottom ⅓ of the tank, experience has shown TTMA's proposal to be adequate. Therefore, we have adopted TTMA's recommendation in the final rule for the lower ⅓ of the tank. However, proposed § 178.340-8(a)(2) (adopted as § 178.345-2(a)(2) herein) is revised to clarify that all piping, and other devices not identified



in § 178.345-8(a)(1), that may retain lading in any tank orientation must be protected from accident damage.

Commenters objected to the use of the term "fail safe" to describe a device designed to fail sacrificially in order to prevent loss of lading or failure of the cargo tank shell. According to one commenter, the implication of the use of the term "creates a situation wherein failure of the device to perform as expected, no matter what the situation, constitutes a design failure and exposes the designer, constructor, and tank owner to legal action." Commenters recommended that the term "shear section" be used, since that is the type of "fail safe" device which is used. TTMA proposed that the wall thickness of the shear section be at least 30 percent less than that of the adjacent piping or valve wall as opposed to the current 20 percent. We recognize the difficulty which may arise through the use of the term "fail safe." We proposed usage of the term "fail safe device" in the NPRM in order to provide some flexibility for cargo tank manufacturers and owners in meeting the safety requirements. We believe that the regulations should allow the development and use of other devices designed to fail sacrificially in order to protect the integrity of the cargo tank. Therefore, § 178.345-8(a)(4), as adopted herein, requires "a sacrificial device such as a shear section." We have adopted TTMA's proposal on the reduction of wall thickness in our definition of "Sacrificial device." The term "sacrificial device" is defined in § 178.345-1 as "a device designed to break at no more than 70 percent of the load that would be required to cause failure of the protected lading retention device, part, or tank wall." The term "shear section" is also defined, as "a sacrificial device fabricated so that the wall thickness of the adjacent piping is abruptly reduced by at least 30 percent." The failure of the sacrificial device must leave the protected lading retention device or part and its attachment to the tank wall intact and capable of retaining lading.

Recently RSPA received a letter requesting clarification on whether a groove which is cast, rather than machined, is permissible under the requirement in existing § 178.340-8(d)(1)(i). The existing regulation requires that a shear section "be machined in such a manner as to abruptly reduce the wall thickness of the adjacent piping (or valve) material by at least 20 percent." RSPA stated in its reply that although an "as-cast shear groove" may produce the same level of

safety as the "machined" shear section, § 178.340-8(d)(1)(i) does not provide for such an alternative. This final rule prescribes a performance requirement for a "sacrificial device" rather than requiring a specific type of device, such as a shear section. Therefore, an "as-cast" shear groove would satisfy the sacrificial device requirements if it can be proven through test or other supporting information that it meets the performance requirement. That is, the shear groove must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or the tank wall.

Commenters objected to the bottom damage protection requirements contained in proposed § 178.340-8(b), particularly the design specifications which require any bottom damage protection device to be able to withstand "an impact equivalent to an energy of 275,000 foot pounds." This energy was based on the impact of a 4,000 pound automobile at a speed of 50 miles per hour or the impact of an 80,000 pound truck backing into a stationary structure at 10 miles per hour. Commenters stated that it is not definitive in engineering technology to define something as an impact equivalent to an energy. As one commenter, Fruehauf, stated, "the strength of the guard needs to be defined as a force rather than an energy." Fruehauf further pointed out that this energy could be created by a light object travelling at a high velocity or a heavy object travelling at a low velocity. TTMA and several individual manufacturers recommended that the design force be a 45,000 pounds force, with the guard extending at least 6 inches from any component that may contain lading. TTMA stated that this recommended force is based on the results of a rear underride study sponsored by the National Highway Traffic Safety Administration (NHTSA). In that study, it was determined that 45,000 pounds is the force created by an automobile travelling at 35 miles per hour impacting a heavy tractor-trailer combination.

Our analysis of past studies sponsored by NHTSA and FHWA has shown that a 4000 pound automobile travelling at 50 miles per hour experiences a force well in excess of 45,000 pounds upon impacting an 80,000 pound tractor-trailer combination. As stated in the NPRM, according to the accident data from studies of underride accidents, a significant percentage of underride accidents occur at or near highway speed limits. The 45,000 pound

force obtained by NHTSA in its study of rear-underride accidents was recommended as the impact force above which the occupants of an automobile, travelling at 35 miles per hour, would not survive the impact of striking a tractor-trailer combination. A 1980 study sponsored by the FHWA entitled, "Performance Upgrading of Commercial Vehicle Rear Underride Guards," contains an equation for determining the maximum impact force experienced in a collision between an automobile and a truck. Assuming an automobile weight of 4000 pounds and width of 5 feet, a ground clearance of 24 inches, and an impact speed of 50 miles per hour, a maximum impact force of approximately 153,000 pounds is attained. That study recommends that a maximum impact force of 124,000 pounds be used in the design of underride guards. The purpose of the FHWA and NHTSA studies differ from our intent in this final rule, in that FHWA and NHTSA were designing a guard to minimize injury to passengers, including injury due to the force of impact, in occurrences where the automobile underrides a tractor-trailer combination. Our intention is to design a guard that will prevent loss of hazardous material lading from the cargo tank when lading retention components are struck in a collision. The maximum forces experienced in an automobile-tractor-trailer collision are the same regardless of the purpose of the guard. Therefore, we believe the guard must be designed to withstand a force of at least 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over the surface of the device.

The NPRM proposed that the impact energy be applied over an area not greater than 6 square feet. Commenters objected to this design feature, declaring that it is too open for interpretation. This final rule establishes a design force of 155,000 pounds which must be applied over the surface of the device, but the allowable guard area and width over which the design force may be applied are limited.

It must be pointed out that the bottom damage protection device described above is only required if the optional external self-closing stop valve is used. An internal self-closing stop valve equipped with the proper sacrificial device need not be protected by an accident damage protection device. Further, in many cases, the vehicle frame, rear wheels, suspension system and rear end tank protection provide all or a significant portion of the necessary protection for external valves.



Comments addressing the proposed rear-end protection requirements were handled under a separate rulemaking action addressing rear bumpers on cargo tank trucks (Docket HM-183B, 54 FR 18820; May 2, 1989).

*Section 178.345-9 (proposed 178.340-9) Pumps, piping, hoses, and connections.* A commenter stated that the provisions in proposed § 178.340-9(a) apply only to loading pumps, as the cargo tank is not on the suction side of an unloading pump and need not be protected from the pump's outlet pressure. TTMA also stated that this paragraph should apply only to those pumps that may pressurize the cargo tank. The intent of this paragraph is to ensure that the cargo tank is protected from excessive rise in pressure due to the action of a pump. We do not believe this provision should be restricted to any one type of pump; however, we do believe that the paragraph can be restricted to those pumps which may pressurize the cargo tank. Therefore, the words "that may pressurize the cargo tank" are added to clarify that these pumps must be provided with an automatic means of closure.

*Section 178.345-10 (proposed § 178.340-10) Pressure relief.* Several commenters objected to the use of the term "spring-loaded," preferring the term "reclosing" to describe the required valves. We are accepting the term "reclosing"; however, we are prohibiting the use of gravity actuated reclosing valves since they may not reclose in the event of a rollover.

Most comments received on the requirements for pressure relief systems addressed the proposal requiring that a dual function vent be capable of withstanding a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation, and be capable of functioning in the event of sustained pressure rise in excess of the prescribed set pressure. Most commenters, including TTMA and NTTC, stated that the proposed device does not exist, and that development and testing of such a vent would require time and extensive funding. Additionally, as NTTC stated, the device necessary to test this vent would require a high degree of sophistication, and funding. Since publication of the NPRM, we have been made aware that at least one manufacturer has developed a vent that purports to satisfy the "dual function" requirements. This manufacturer has publicly stated that the cost of such a vent would be about twice that of the currently used spring-loaded pressure relief device. We

believe that the development, testing, and use of the proposed dual function vent is desirable, and that such a device can be effectively and economically produced. However, we realize that a reasonable period must be provided for development, testing, and ultimately, installation of these devices on cargo tank motor vehicles. Therefore, the mandatory use of the dual function pressure relief device is delayed until June 13, 1994. Use of the "dual function" device is permissible until that time.

We believe that until use of the dual function vent is mandatory, provisions are needed to limit the amount of product that is released from a pressure relief device in the event of a dynamic pressure surge, such as during a rollover, and to ensure that the device reseats and does not leak within a reasonable period. As a result of the various public meetings held between DOT and TTMA, TTMA has adapted an Australian standard for testing the behavior of pressure relief devices in rollover situations. This standard requires that each spring-loaded pressure relief valve be subjected to a series of three drop tests, to simulate a rollover situation. The amount of liquid ejected during the test is measured each time, and the amount lost must be less than a specified amount, for all three tests, for the pressure relief device to meet the requirements of the standard. After June 12, 1991, each pressure relief valve must be capable of reseating after a pressure surge and not release a volume greater than one gallon. This allowable release volume was derived from a series of tests conducted by TTMA on existing pressure relief valves mounted in MC 306 dome covers. During these tests, the pressure relief valves remained open for an average of 53 milliseconds before reseating, with an average of 0.8 gallon of water ejected. Specific initial pressure conditions and calibration requirements are added to insure the magnitude and duration of the pressure generated in actual roll-overs is duplicated by the drop test.

Several commenters claimed that to install a valve on a tank which would withstand a 50 psig pressure surge for up to 300 milliseconds would create a greater hazard to safety than a valve which releases a small amount of product in a pressure surge. These commenters stated that the cargo tank could potentially rupture if the pressure of the surge is held inside the tank. Commenters presented no data to support their claim that the cargo tank will rupture if subjected to a 50 psig pressure surge. In the absence of data to support that claim, the requirements for

a dual function vent are adopted in the final rule.

The requirement contained in proposed § 178.340-11(f) that all pressure relief devices be certified in compliance with the design and testing requirements by a responsible official of the manufacturer and Authorized Inspector has been removed. These pressure relief devices must be certified by the device manufacturer (See preceding discussion in this preamble regarding the use of the Authorized Inspector). Certification in accordance with the ASME Code is required for relief devices built in accordance with the ASME Code.

Several commenters objected to the proposal to prohibit the use of non-reclosing pressure relief devices, specifically for MC 312 cargo tanks (DOT 412 cargo tanks herein). Commenters stated that non-reclosing devices, such as fusible and frangible (rupture) disks, provide a greater venting capacity and are less vulnerable to damage in a rollover accident than reclosing relief devices. Further, commenters argued that the MC 312 cargo tank is used primarily for corrosive materials. For corrosive materials, a large proportion of the required total venting capacity is for a fire situation and, in certain cases a single, lower capacity reclosing pressure relief device is more than adequate to relieve any pressure that will accumulate in the tank due to product expansion. Commenters also stated that to add several smaller capacity reclosing devices to replace a larger capacity non-reclosing device will unnecessarily add potential sources of leakage to the cargo tank.

As stated in the preamble to the NPRM, in a cargo tank accident, particularly an overturn followed by a fire, the functioning of a frangible disc or a fusible element would result in the release of a substantial quantity of lading, while a reclosing valve would minimize the quantity of lading released. Further, we believe that frangible discs are much more likely to fail as a result of impact and liquid surge than reclosing pressure relief devices. However, we recognize that low vapor pressure corrosive materials with no other hazards are not as susceptible to fire as flammable materials, and do not require the same total venting capacity. Therefore, instead of allowing frangible discs as a method of reducing the number of vents required, this final rule provides for a lower total venting capacity for cargo tanks transporting low vapor pressure corrosive materials with no other hazards. For these cargo



tanks, the total venting capacity must be determined by the equation appearing in the IM portable tank specification at § 178.270.11(d)(3). This equation relates the properties of the material to the required venting capacity. Cargo tanks with a total venting capacity determined in this manner must be in dedicated service for the corrosive material for which the required venting was calculated.

Several commenters argued that the proposed provisions on pressure relief devices were different from the pressure relief requirements of the ASME Code. It has always been our position that since cargo tanks are not stationary vessels, different pressure relief requirements are warranted.

Commenters also objected to the proposed elimination of the 1 psig "normal vent" from the DOT 406 cargo tank. Those comments are addressed in the discussion in § 178.346-1, on the design/operating pressure of the DOT 406, and in § 178.346-10 on pressure relief devices.

*Section 178.345-11 (proposed § 178.340-11) Tank Outlets.*

Several commenters stated that a definition of the term "leak tight" should be established, since a drip-tight seal is extremely difficult to maintain, particularly for chemical tanks. Commenters requested that a limited amount of leakage be permitted for closures equipped with an additional leak tight cap or a closure outboard of the primary means of closure. TTMA and several manufacturers requested that leak tight be defined as no liquid leakage in excess of 30 cubic centimeters in 5 minutes with the tank pressurized to the maximum allowable working pressure. This amounts to in excess of one-third of a quart per hour. It is our position that any leakage from a closure presents an unsafe condition, even where such closure is provided with a secondary closure. A leak from the inboard closure would permit the accumulation of hazardous material lading between the inboard and the outboard closures, which would be spilled from the piping upon removal of the external closure. Such an occurrence could potentially injure transport workers or create a fire situation. Therefore, the term "leak tight" in this final rule means no leakage.

During the last several years, RSPA has received numerous inquiries concerning the required location of the self-closing stop valve required by the cargo tank specifications. The NPRM contained a proposal to allow the use of "external" valves in place of internal valves, provided the external valve is adequately protected against damage

which could result in loss of lading from the cargo tank shell. This provision is revised in the final rule to identify those situations (valve locations) where accident damage protection devices are required, and those situations where the use of a shear section would provide adequate protection against the loss of lading from the cargo tank.

The NTSB expressed its opposition to the proposed revision to permit the use of external valves in lieu of internal valves. NTSB stated: "The protection afforded by current requirements will be negated because an external valve will be more subject to damage from impacts that can render this essential safety device useless during emergencies." As was stated in the preamble to the NPRM, we believe that vacuum-loaded cargo tanks operating under DOT exemption, which have external self-closing stop valves protected by bottom damage protection, have demonstrated a high level of integrity. We have no experience data to indicate that this type of valve arrangement with adequate protection presents an unsafe condition. Therefore, we are permitting the use of adequately protected external valves. However, we have specified that the valve must be securely closed during transportation, and remain intact and capable of retaining product if the self-stored energy source is sheared off in an accident. Further, any piping extending beyond the accident damage protection device must be equipped with a sacrificial device which will fail under load in order to protect the external valve, piping and cargo tank wall.

Several commenters from the hazardous waste industry objected to the clarification that stop valves must be self-closing. Commenters stated that for cargo tanks transporting hazardous waste which may contain solids, semi-solids, or foreign objects which may interfere with the operation of the valve, a manually operated valve is preferable. A manually operated valve allows the operator to reopen the valve and remove the foreign object. A self-closing valve, commenters contended, would be damaged in a case where an obstruction blocks reseating of the valve. We recognize that solids or foreign objects may be present in waste materials and can potentially create an obstruction to effective seating of the discharge valve. However, many hazardous wastes which are transported in vacuum loaded cargo tanks do not contain solids or foreign objects. Also, the rule does not limit the use of these cargo tanks to hazardous wastes. We believe a safety feature must be available which will ensure that the discharge valve closes in an emergency situation such as a fire,

where the operator may not be able to reach the valve. Therefore, we have revised the proposal to allow the stop valve on a loading/unloading outlet to be manually operated in normal loading and unloading operations. In addition, the cargo tank outlet must be equipped with a self-closing feature that will close automatically in an emergency situation, such as a fire.

The requirements for remote operators and thermally activated closures have also been revised for clarity. Additionally, a time limit of 30 seconds maximum has been placed on the time permitted from the actuation of a self-closing valve system to full closure. This time limit was established based upon discussions which took place at the public working meetings.

*Section 178.345-12 (proposed § 178.340-12) Gauging devices.* The proposal would have required that each cargo tank, except a tank intended to be filled by weight, be equipped with a gauging device which indicates the maximum permitted liquid level. Fruehauf commented that, in addition to allowing tanks to be filled by weight, the filling of tanks by a meter should be included. It was not our intention in the NPRM to limit the authorized method of loading of these cargo tanks. Rather, it was our intention to allow any method that would measure the actual amount of product contained in the cargo tank at any one time, including any heel that remains in the tank when it is reloaded.

TTMA stated that cargo tanks filled by volume, or intended to be loaded through an open manhole, should also be exempted from the requirement for gauging devices. These methods of loading can perhaps accurately measure the quantity of hazardous material that is loaded in the tank at the time of filling, but will not measure any residual lading which remained in the tank from a previous load. A cargo tank which is loaded by weight will take into account the total lading in the cargo tank at one time. Therefore, the proposed gauging device requirement is adopted unchanged.

*Section 178.345-13 (proposed § 178.340-13) Pressure tests.* This section has been revised to clarify that the pressure test applies to the "tank" rather than the "cargo tank."

*Section 178.345-14 (proposed § 178.340-14) Marking.* Several commenters stated that the location of the required nameplate and specification plates should be the right or curb side of the vehicle, in order to ensure that the inspector is not placed in an unsafe position while inspecting these plates. Other commenters stated



that the location of the plates should be "on the same side as the NHTSA plate," in consideration of any changes made in the location of the NHTSA plate. The location of the certification plate was moved to the left side of the cargo tank several years ago to coincide with the location of the NHTSA identification plate. A change in the location of the plate was not proposed in this rulemaking. Therefore, any discussion of such a change is deferred to a future rulemaking.

Commenters also stated that, in addition to allowing the nameplate and specification plate to be attached directly to the tank, the integral supporting structure of the tank should be authorized as an attachment site for the plates. RSPA has reservations about allowing the plates to be attached to the chassis of the cargo tank motor vehicle, because in some instances, a tank will be placed on a new chassis, while the specification plate remains on the old chassis. In this scenario, the cargo tank is rendered out of specification due to the lack of a specification plate. However, we do not object to the attachment of the plates to an integral supporting structure, which will never be separated from the tank.

The provisions in this section are reorganized to consolidate and place in paragraph (a) the requirements on the location and attachment of the nameplate and specification plate, the information required to be marked on these plates, and the size of the lettering.

The proposal would have required that the nameplate be affixed to each cargo tank, and a specification plate be affixed to each cargo tank motor vehicle. It was our intention to allow the use of a single plate on a cargo tank motor vehicle composed of more than one cargo tank made to the same specification. These provisions are revised to clarify that only one plate is required for each cargo tank motor vehicle if: the cargo tank motor vehicle is composed of non-ASME cargo tanks, none of which are separated by a void space; all the information required by paragraphs (b) and (c) appears on the plate; and the plate is not covered or hidden by any insulation. If a single plate is used, the information required must be printed for each cargo tank, from front to rear, in the order of the corresponding cargo tanks.

NTTC stated that the color coding requirement in proposed paragraph (f)(2) for specification plates on multi-specification cargo tanks is redundant to the information appearing on the data plate and, therefore, is unnecessary. We agree with the NTTC, and proposed paragraph (f)(2) has been removed.

**Section 178.345-15 (proposed § 178.340-15) Certification.** The proposed provision to require that the certification certificate be signed by an Authorized Inspector, and that a cargo tank not requiring ASME Code certification be certified as "constructed in accordance with the ASME Code" are not adopted in this final rule. See the earlier preamble discussions under subject headings.

In addition, the proposed requirement that design drawings be attached to the certification certificate and be provided to the purchaser has been removed. We believe that it is important for drawings to be furnished to the final manufacturer in a multi-stage construction. However, based on the comments we received, we no longer believe it is necessary for DOT to require that the drawings be provided to the purchaser of the cargo tank motor vehicle.

**Section 178.346 (Specification DOT 406 cargo tank motor vehicle).** Numerous commenters addressed the proposed revision of the MC 306 cargo tank specification. Commenters objected to the designation of the MAWP (design pressure) range of an MC 306 cargo tank between 3 psig and 14.9 psig. Comments received from cargo tank manufacturers, motor carriers and shippers all stated that there is no need to set the minimum pressure of this cargo tank at 3 psig, as these cargo tanks have been operating successfully for many years at a working pressure of 1 psig, which is maintained through the use of the 1 psig normal vent. The normal vent was not included in the NPRM. A minimum MAWP of 3 psig would have required that pressure relief devices be set at 3 psig, identical to current MC 306 cargo tank specification requirements. Operators of MC 306 cargo tanks used to transport gasoline have stated that the normal vent, in normal operation, vents predominantly air. During transportation, the gasoline heats up and expands, increasing the pressure in the vapor space of the tank, which contains mostly air. This increased pressure is relieved when it reaches 1 psig. Without the normal vent, commenters stated, the cargo tank will be operated at higher pressures unnecessarily and perhaps unsafely, with a reduction in the fatigue life of the cargo tank.

As was stated earlier in this document, we are concerned that in an overturn situation, even with an undamaged cargo tank, relief valves set at a pressure less than that determined from the formula in § 173.33(c) will release product continuously without reseating. However, the design of the 1 psig normal vent is such that it will not

function in an overturn situation. We also point out that the MC 306 cargo tank is not used exclusively for gasoline, and higher vapor pressure materials could be transported in these cargo tanks, provided the MAWP of the tank complied with proposed § 173.33(c). A cargo tank equipped with a normal vent, carrying lading with a vapor pressure greater than 1 psig, would vent lading through the normal vent during normal transportation conditions. For this reason, in the final rule a 1 psig normal vent may be installed only on a DOT 406 (or MC 306-type) cargo tank which is used to transport a material for which the sum of the vapor pressure at 115 °F and 1 psig is less than or equal to the MAWP.

Manufacturers and carriers have maintained that there is no need to define a range of MAWP's for this cargo tank, since there are no cargo tanks currently built to the MC 306 specification which have a design pressure of "over 3 psig and less than 14.9 psig." They stated that the MC 306 is generally considered to be a "gasoline" cargo tank. Taking full consideration of these comments, we have established a minimum MAWP for a DOT 406 cargo tank based on the minimum pressure that any point on the cargo tank might see when in a rollover situation. The final rule establishes a minimum MAWP of 2.65 psig for the DOT 406 cargo tank. This pressure includes the static head of a gasoline lading in a typical MC 306-type cargo tank, plus a maximum of 1 psig of vapor pressure which will be seen in a tank equipped with a normal vent. For DOT 406 cargo tanks with a larger static head than that produced by gasoline in cargo tanks currently used, the MAWP must exceed 2.65 psig. In each case the required MAWP for the lading must be determined in accordance with § 173.33(c). The MAWP of a cargo tank not equipped with a normal vent may be as high as 4 psig to account for the variations in the lading. (See also discussion of maximum ambient temperature table for gasoline in § 173.119).

To accommodate situations where the ASME Code conflicts with current MC 306 design and construction practices, TTMA presented a list of sections of the ASME Code which they believe should not apply to construction of the new DOT 406 cargo tanks, including those sections relating to head formation and installation. We do not believe that adequate justification was presented for the elimination of many of the sections of the ASME Code cited by TTMA for exception in the DOT 406



specification. However, we agree that certain provisions in the ASME Code need not be applied to the construction of the DOT 406 cargo tank.

As discussed earlier in the preamble, § 178.345-1 provides certain exceptions to the ASME Code for the DOT 406 cargo tank. These exceptions include the required certification by a National Board authorized inspector, the use of "stuffed heads," and the construction of cargo tanks with an elliptical cross section. Other exceptions include the required loadings to be used in stress calculations, marking and certification of the cargo tank, material identification and recordkeeping requirements.

Thickness tables for shell, heads, bulkheads, and baffles for DOT 406 cargo tanks are contained in § 178.346-2. These tables have been greatly simplified, and are based on the volume of the cargo tank in gallons rather than on the volume capacity in gallons per inch, as has been used previously, because of the elliptical shape of most of these cargo tanks.

Section 178.346-10 contains a provision to allow the 1 psig "normal vent," as discussed earlier in this preamble. We are allowing the use of a 1 psig vent in order to extend the life of the cargo tank, on the basis that this vent releases predominantly air, and not hazardous material lading, during transportation. This section limits the use of cargo tanks equipped with normal vents to loadings meeting the requirements of § 173.33(c)(1)(i)(C).

As was discussed earlier in this document, the final rule requires pressure relief devices to be set at 120 percent of the MAWP of the cargo tank. Many commenters to proposed § 178.340-10 objected to the requirement that reclosing pressure relief devices close after discharge at not less than 90% of the set-to-discharge pressure, as it applies to the MC 306 cargo tank. For these cargo tanks, in order for a valve seat to lift high enough to allow the large airflows required in this specification, reclosing at 90% of the opening pressure will be nearly impossible. A commenter recommended that the reclosing pressure be reduced to 75% of the opening pressure. We believe that this comment has merit; however, in a cargo tank accident involving a rollover, the pressure exerted on the pressure relief device will be equal to the tank static head of lading plus the vapor pressure of the lading added to any gas padding. For cargo tanks equipped with a 1 psig normal vent transporting gasoline, the minimum pressure in this situation is 2.65 psig. Therefore the minimum reclosing pressure for a relief device on these tanks must be 2.65 psig, to ensure

that the device indeed reseats, particularly during an overturn situation. To allow this pressure to be 75% of the set-to-discharge pressure would necessitate a minimum set pressure of 3.5 psig. However, this pressure is 130 percent of the MAWP of the cargo tank. In order to balance the requirements for a minimum reclosing pressure, and the concerns of the industry regarding the necessary differential between the set pressure and the reclosing pressure, the final rule requires that the primary pressure relief valves on DOT 406 cargo tanks be set to discharge at 125 percent of the MAWP (or 3.3 psig for gasoline cargo tanks equipped with a normal vent), and reclose at not less than 80 percent of the set to discharge pressure. The higher setting of relief valves at 125 percent of the tank MAWP has precedence in the intermodal tank area, where an ASME Code case approved such an arrangement. The required minimum reclosing pressure of 80 percent of the set pressure will provide substantial relief from the general requirement which states that pressure relief devices must reseal at not less than 90 percent of the set to discharge pressure.

TTMA suggested certain additional testing requirements for MC 306 cargo tanks. These tests would be used to ensure the proper functioning of relief valves at the set-to-discharge pressure, and ensure that these devices retain the cargo tank pressure below the set-to-discharge pressure. These devices are required to be tested and certified by the device manufacturer at the time of manufacture, and will be periodically tested in accordance with the requirements of Part 180. We believe it is unnecessary to add these additional requirements to the cargo tank manufacturing specifications.

The required test pressure found in § 178.346-13 herein has been changed to the greater of 5 psig or 150 percent of the MAWP, and the inspection pressure to the MAWP, with a minimum of 2.65 psig, to coincide with the change to prescribe the minimum MAWP of 2.65 psig for a DOT 406 cargo tank.

*Section 178.347 (Specification DOT 407 cargo tank motor vehicle).* As discussed earlier in the preamble, certain requirements have been relaxed. DOT 407 cargo tanks with a design pressure of 35 psig or less must be constructed in accordance with the ASME Code, with certain exceptions which are found in § 178.347-1. These exceptions include the use of a Registered Inspector in place of an Authorized Inspector for inspection and certification; the use of the "stuffed head" configuration, and knuckle radius

of less than 6% of the tank diameter. Other exceptions include the required loadings to be used in stress calculations, marking and certification of the cargo tank, material identification and recordkeeping requirements.

Cargo tanks with a design pressure above 35 psig must be constructed and certified in full conformance with the ASME Code. These cargo tanks are of sufficiently high pressure to warrant the additional safety benefits of the ASME Code. Cargo tanks constructed to these pressures are generally not constructed with "stuffed heads."

Revised thickness tables, as discussed in the preamble to § 178.345-2, are found in § 178.347-2. Where the minimum thicknesses recommended by TTMA are lower than the thicknesses required by the current regulations, the higher values found in the current regulations are prescribed in the table.

Several commenters pointed out that vacuum relief devices should not be required on vacuum-loaded cargo tanks. We agree with the commenters and an exception has been added in § 178.347-10(b) which grants relief from the requirement for vacuum relief devices on cargo tanks designed to be loaded by vacuum. Cargo tanks not designed to be loaded by vacuum, however, must have a vacuum relief system capable of limiting the vacuum in the tank to less than 80 percent of the design vacuum capability of the cargo tank.

*Section 178.348 (Specification DOT 412 cargo tank motor vehicle).* A commenter stated that lower pressure (less than 15 psig design pressure) MC 312 cargo tanks, with elliptical cross-sections, are being used to transport low-density, low vapor pressure corrosive materials in oilfield servicing operations. The hazardous materials carried in these cargo tanks would require a design pressure less than 15 psig, based on the requirements of § 173.33(c). The commenter argued that there is no need to require a minimum design pressure of 15 psig, and full ASME construction, for these cargo tanks. Application of the ASME Code would require a circular cross-section to replace the elliptical cross-section currently used, and create cargo tanks with a higher center of gravity and less stability. Due to the lesser hazard and low vapor pressure of these materials, we agree that a 15 psig minimum design pressure is not necessary.

To permit the transportation of hazardous materials with low vapor pressure, we have revised the minimum MAWP for DOT 412 cargo tanks to 5 psig. The requirements of § 173.33(c) must be met for any material to be



transported in these cargo tanks. Any DOT 412 cargo tank with an MAWP between 5 and 15 psig must be constructed in accordance with the ASME Code with certain exceptions. These exceptions allow an elliptical cross-section, and all inspection and certification of these tanks may be performed by a Registered Inspector instead of an Authorized Inspector.

As stated in the discussion of § 178.345-10 earlier in this preamble, several commenters asked that non-reclosing pressure relief valves be authorized for MC 312 cargo tanks transporting corrosive materials. Alternatively, § 178.348-10 has been revised to allow a lower total venting capacity on these cargo tanks only when used in dedicated service for corrosive materials with no other hazard.

**Subpart F, Part 180.** This new subpart establishes the requirements for the retest, requalification and use of cargo tank motor vehicles.

**Section 180.403.** Several comments were received on the proposed definitions contained in this section.

**Modification.** Several commenters stated that the definition of "modification" should be revised to include only changes to the original cargo tank shell design. They stated that this change would ensure that the replacement of valves and fittings, and minor changes to appurtenances, such as fender attachments, lighting brackets, and ladder brackets would not be construed as modification. We agree that minor changes to non-lading retention components of the cargo tank, and replacement of valves and fittings, as long as they are in conformance with the original design criteria and appropriate specification, should not be considered "modifications." Therefore, the definition of "modification" is revised to clarify that modification means any change to a tank's original design and construction that would affect the structural integrity of the tank, and to exclude minor changes to and replacement of many appurtenances, fittings, valves, and vents. We have also removed "stretching," which is also defined in this section, from the definition of "modification."

**Rebarrelling.** Several commenters objected to the proposed definition of "rebarrelling" which was defined as "replacing more than 25 percent of the shell material of a cargo tank." Commenters stated that "rebarrelling" should mean replacement of 100 percent of the cargo tank shell, and that such replacement of the cargo tank shell material should not be subject to the requirements in § 180.413, which would require any rebarrelling to conform to

the specification in effect at the time of rebarrelling. We disagree with the commenters. It is our position that replacement of a large portion of the cargo tank wall constitutes the manufacture of a new cargo tank, and the cargo tank must conform to the specification requirements in effect at the time of manufacture. What constitutes rebarrelling was discussed at the public meetings. In consideration of those discussions, "rebarrelling" is defined in this final rule to mean replacing more than 50 percent of the cargo tank wall.

**Repair.** The definition of "repair" is revised to clarify that the term refers only to work involving welding on a cargo tank's pressure parts. Therefore, the replacement of a valve or fitting which involves no welding does not constitute a "repair" and, therefore, is not required to be performed in an ASME "U" shop or a National Board "R" shop.

Paragraph (c) of this section permits the modification of the pressure relief devices and outlets of certain cargo tank specifications previously authorized to conform to a new specification. For instance, the outlets on an MC 307 cargo tank may be modified to conform to the outlet requirements found in the DOT 407 specification. This provision will allow MC 307 cargo tanks to be equipped with external self-closing stop valves, provided the valves are adequately protected as required by § 178.345-8.

**Section 180.405.** Paragraph (f) of this section contains provisions for re-marking certain cargo tanks manufactured under the terms of an exemption as DOT specification cargo tanks, under certain circumstances. This provision generally refers to vacuum-loaded cargo tanks constructed under exemption, substantially in compliance with the MC 307 or MC 312 cargo tank. For many years we have required that vacuum-loaded cargo tanks must be equipped with self-closing valves. There has been a great deal of confusion and misunderstanding on the part of exemption holders regarding the self-closing and remote closure features of these valves. This has resulted in cargo tanks manufactured without these features. It still is our position that these valves must have a self-closing feature; however, this self-closing feature may be external to the valve. This will allow the use of a valve which may be manually operated in normal loading and unloading operations. In order to allow adequate time for owners of vacuum loaded hazardous waste cargo tanks currently under exemption to equip their cargo tanks with self-closing

valves, we are providing a 2-year compliance period. Cargo tanks meeting the requirements of § 180.405(f) except for the self-closing valve requirement, may be re-marked in accordance with that paragraph only after the self-closing valve has been installed.

The requirement currently in § 173.33(a)(2) granting a 36-month compliance period for certain cargo tank motor vehicles to be equipped with a rear accident damage protection device has been placed in § 180.405(1). The MC 303 cargo tank motor vehicle, which is a MC 306 type cargo tank, was not included in the final rule adopting those provisions (Docket HM-183B). It is added in this rule.

**Section 180.407.** Existing § 173.33(d)(i) contains an exception from the hydrostatic or pneumatic test for MC 330 and MC 331 cargo tanks used only in sodium metal service, since sodium metal presents a severe fire risk in contact with water, and the purity of the sodium metal must be maintained. A new Note 1 has been added to the Retest and Inspection Table in § 180.407(c) which retains this exception.

A commenter stated that lined or clad cargo tanks should not be hydrostatically retested. The commenter stated that a visual internal examination will reveal any problem with the lining that must be corrected. Further, the commenter pointed out that the tank car retest table in § 173.31 excepts glass, rubber, lead, or elastomeric lined tanks from periodic retest, and a similar exception should apply to cargo tanks. We agree with the commenter that for lower pressure cargo tanks, hydrostatic testing of a cargo tank which is lined or clad may not be a suitable indicator of the tank's structural integrity, particularly where the lining or cladding provides additional support to the tank. If a problem or defect in the lining or cladding exists, hydrostatic testing may cause deterioration of the tank under the lining, especially with acidic loadings. Therefore, a new Note 2 is added to the Retest and Inspection Table which contains an exception from the pressure test for uninsulated lined or clad tanks with a design pressure or MAWP less than 15 psig. These cargo tanks will be subject to the periodic lining inspection requirements. We believe that higher pressure (greater than or equal to 15 psig MAWP or design pressure) cargo tanks must be hydrostatically tested, and this requirement appears in the final rule.

Several commenters also noted that exceptions from the external and internal visual inspections which appear in the current regulations for certain



cargo tanks for which such inspection is impracticable or impossible were not included in the NPRM. These provisions were inadvertently omitted in the NPRM. Accordingly, paragraph (d), in the final rule, allows an internal visual inspection to be performed in place of the external visual inspection for cargo tanks which are insulated, and allows the pressure retest conducted in accordance with this section to be used in place of both the internal and external visual inspections when visual inspection of the cargo tank is precluded by both internal coating and external insulation, or when the cargo tank is not equipped with a manhole or inspection opening. Paragraph (e) contains an exception from the internal inspection requirements for cargo tanks not equipped with a manhole or inspection opening.

Paragraph (g) has been relaxed to allow inspectors other than Registered Inspectors to perform the pressure test. The inspector's qualification must be as prescribed in § 180.409, and the inspector must be identified to the Department in accordance with that section.

Several commenters objected to the proposed requirement in § 180.407(d)(2) to remove all spring-loaded pressure relief valves from the cargo tank for inspection and testing. These commenters pointed out that the pressure relief devices for MC 306-type cargo tanks are usually mounted in the dome cover. The removal of the dome cover on an annual basis for inspection and testing of the pressure relief valves would create unnecessary expense and downtime. Commenters recommended that the pressure relief devices be removed for inspection and testing at the time of the pressure test, which for most cargo tanks is at a 5 year interval. We believe the commenters' suggestion has merit. However, we do not believe that a 5-year frequency in removal, testing, and inspection is adequate for pressure relief devices which may be subject to corrosion damage due to the lading. Corrosion damage due to environmental elements can be detected during the annual external visual inspection. Therefore, as adopted in this final rule, pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation, during the annual external visual inspection. Only those pressure relief valves on cargo tanks used to transport lading corrosive to the valve must be removed for testing and inspection on an annual basis. All pressure relief devices must be removed from the cargo tank for testing and

inspection at the time of the pressure test.

A new provision has been added to the external visual inspection requirements in § 180.407(d)(2) to address the inspection of the gaskets on full opening rear heads. Additionally, the frequency of visual inspection of cargo tanks with full opening rear heads has been increased to once every 6 months in lieu of once each year. At the suggestion of the National Propane Gas Association (NPGA) (formerly National Liquefied Petroleum Gas Association) and several other commenters, a requirement to inspect the tank head and shell areas covered by the upper skid plate for corroded and abraded areas has been added to the visual inspection requirements. This inspection must be conducted at the time of the internal visual inspection, since we do not believe it is necessary to inspect this area on an annual basis.

The hydrostatic pressure test described in § 180.407(g) has also been modified to include only the cargo tank, less fittings, as contained in the current regulations. Additionally, in accordance with NTTC's comments, this section has been revised to clarify that owners of fewer than 5 cargo tanks have 5 years in which to pressure test their cargo tanks. As stated earlier, the requirement for removal of pressure relief valves for inspection and testing must be performed at the time of the pressure test for most cargo tanks.

Proposed paragraph (g)(4) would have required that each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel, or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, liquefied petroleum gas, or any other hazardous material that may cause stress corrosion cracking, be inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the pressure test. Several commenters, including the NPGA and the CGA objected to the application of the requirements to all cargo tanks used to transport liquefied petroleum gas in this requirement. These commenters stated that only "corrosive" liquefied petroleum gas transported in cargo tanks constructed of quenched and tempered steel causes stress corrosion cracking, and liquefied petroleum gas which is transported in accordance with 49 CFR is not corrosive to the tank. They further indicated that the transportation of corrosive LP gas in quenched and tempered steel cargo tanks is a compliance problem rather than a

problem with existing regulations. The commenters claim that the addition of the proposed wet fluorescent magnetic particle inspection presents an unacceptable expense to those motor carriers who are currently complying with the requirements for transportation of liquefied petroleum gas.

We believe that in many cases, a load of "sour" LP gas will be transported in a cargo tank due to inadequate product testing on the part of shippers and carriers. We agree that this situation constitutes non-compliance with the current regulations, and there is insufficient data to indicate that "non-corrosive" LP gas causes stress corrosion cracking, or that "corrosive" LP gas causes stress corrosion cracking in cargo tanks constructed of other than quenched and tempered steel. Therefore, for cargo tanks transporting liquefied petroleum gas, we have limited the requirement for wet fluorescent magnetic particle inspection to cargo tanks constructed of quenched and tempered steel (Part UHT of the ASME Code). However, this includes the transportation of all liquefied petroleum gas and not only that which is considered "corrosive."

Several commenters argued that MC 330 and MC 331 cargo tanks should be excepted from the leakage test, since these tanks are effectively leak tested every refill. The requirements for the leakage test, which appear in paragraph (h), have been clarified to allow the leakage test to be evaluated with the hazardous materials lading in the tank for MC 330 and MC 331 cargo tanks.

*Section 180.409.* Paragraph (a) of this section has been clarified to indicate that all persons performing any prescribed inspection or test must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed. As stated earlier in this preamble under the heading "Inspection and Testing", the requirement that the person performing thickness testing be qualified in accordance with ASNT Level II for ultrasonic testing has been dropped. The person performing thickness testing must be trained in the use of the thickness testing device by the employer of the tester in accordance with the instructions of the manufacturer of the thickness testing device. Additionally, the person performing, or witnessing and certifying, the pressure test may be a Registered Inspector or an employee of the motor carrier or the owner of the cargo tank who has training and experience in conducting pressure tests in accordance with the ASME Code.



**Section 180.411.** Several commenters objected to the acceptability of results of tests and inspections related to cuts, digs, or gouges. The NPRM stated that no cut, dig, or gouge may be greater than 4 inches in length. Commenters stated that the length of the cut, dig, or gouge is irrelevant; the important factor being the depth of the defect. We agree that the most important factor of any cut, dig, or gouge is its depth. Accordingly, we have removed the length specification and now require that the minimum thickness remaining beneath a cut, dig, or gouge not be less than that prescribed in the applicable specification.

Several commenters argued that this section is too restrictive in that it does not allow any reduction in thickness below that prescribed in the applicable specification. These commenters pointed out that CGA TB-2, which is referenced in the repair procedures for MC 330 and MC 331 cargo tanks, allows minor defects to be removed by grinding if the wall thickness is not reduced below that shown on the data plate minus 0.010 inch. It was recommended that some tolerance be allowed for isolated areas. We have consistently held that, as stated in the current regulations at § 177.824(i) (and in § 180.407(j) herein), the cargo tank metal certification plate must be removed or made illegible if for any reason a cargo tank no longer meets the applicable specification. This includes the minimum wall thickness. Shippers and carriers were made aware of these provisions in a rule related notice titled "Carriers and Shippers—Concerning Continuing Qualification of Cargo Tanks" (48 FR 15127; April 7, 1983).

**Section 180.413.** Commenters objected to the proposed requirement that any repair, modification, stretching, or rebarrelling be performed in accordance with the specification in effect at the time the work is done. Commenters stated that we should require only that the work conform to the specification at the time of manufacture. In many cases, the entire cargo tank could not be brought into compliance with the new specifications. We believe that a stretching or rebarrelling constitutes a major change to the cargo tank which effectively creates a new cargo tank, and that such work must be performed in accordance with the specification requirements in effect at the time of stretching or rebarrelling. The change in the definition of "rebarrelling" from 25 to 50 percent replacement of the cargo tank wall will limit the number of changes to a cargo tank which require conformance with the current specification rather than the

specification in effect at the time of manufacture. Additionally, we have made certain changes to clarify that only the parts affected by the stretching or rebarrelling need be in compliance with a new specification. "Modifications" and "repairs" may conform to the original specification or to the specification in effect at the time the work is performed.

The requirement that repairs be certified by an Authorized Inspector has been relaxed to allow certification by a Registered Inspector. Proposed paragraph (b)(vi) of § 180.413 has been changed to require repairs to MC 330 and MC 331 cargo tanks to be performed in accordance with the National Board Inspection Code's "Provisions for Repair of Pressure Vessels" instead of section VIII of the ASME Code under which the cargo tank was built. The National Board Inspection Code more specifically addresses repair.

**Section 180.415.** The letter "K" has been added to designate the leakage test in cargo tank markings.

**Section 180.417.** Paragraph (a)(3)(i) has been revised to allow testing and certification of non-ASME Code stamped cargo tanks under the direct supervision of a Registered Inspector rather than an Authorized Inspector.

#### Administrative Notices

##### A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. However, it is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

##### B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities. A

regulatory flexibility analysis is available for review in the docket.

#### D. Paperwork Reduction Act

Information collection and recordkeeping requirements contained in this amendment have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and assigned control number 2137-0014.

#### List of Subjects

##### 49 CFR Part 107

Practice and procedures.

##### 49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

##### 49 CFR Part 172

Hazardous materials transportation.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

##### 49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Cargo vessels.

##### 49 CFR Part 177

Hazardous materials transportation, Motor carriers.

##### 49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

##### 49 CFR Part 180

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Title 49, Chapter I, Subchapters B and C of the Code of Federal Regulations, are amended as follows:

#### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53, and Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

2. The Table of Sections of Part 107 is amended by adding a new Subpart F consisting of §§ 107.501, 107.502, 107.503 and 107.504 to read as follows:



**Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers**

Sec

- \* \* \* \* \*
- 107.501 Scope.
- 107.502 General registration requirements.
- 107.503 Registration statement.
- 107.504 Period of registration, updates, and record retention.
- \* \* \* \* \*

3. A new Subpart F is added to read as follows:

**Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers**

**§ 107.501 Scope.**

This subpart establishes registration procedures for persons who are engaged in the manufacture, certification, inspection or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under the terms of an exemption issued under this part.

**§ 107.502 General registration requirements.**

(a) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or an exemption issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered.

(b) A person who performs functions which are subject to the provisions of this subpart may perform only those functions which have been identified to the Department in accordance with the procedures of this subpart.

(c) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: Approvals Branch, Office of Hazardous Materials Transportation, Attn: DHM-32, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

(d) Upon determination that a registration statement contains all the information required by this subpart, the Department will send the registrant a letter confirming receipt of the registration application and assigning a registration number to that person. A separate registration number will be

assigned for each cargo tank manufacturing, assembly, repair facility or other place of business identified by the registrant.

(e) *Definitions.* Definitions for the terms "Authorized Inspector," "cargo tank," "cargo tank motor vehicle," "design certifying engineer," "person," and "Registered inspector" are set forth in § 171.8 of this chapter. Definitions for the terms "design type" and "manufacturer" are set forth in § 178.320, and the term "repair" in § 180.403 of this chapter.

**§ 107.503 Registration statement.**

(a) Each registration statement must contain the following:

- (1) Name;
- (2) Street address, mailing address and telephone number for each facility or place of business;
- (3) A statement signed by the person responsible for compliance with the applicable requirements of this chapter, certifying knowledge of those requirements and that each employee who is an inspector or design certifying engineer meets the minimal qualification requirements set forth in § 171.8 of this chapter for "registered inspector" or "design certifying engineer", respectively. For an organization, the certification must be signed by an official;
- (4) A description of the specific functions to be performed, e.g., manufacture or repair of cargo tanks, assembly of cargo tanks to cargo tank motor vehicles, inspection and testing, design or cargo tank certification, etc. For inspection and testing, identify the specific types of inspections and tests;
- (5) An identification of the types of DOT specification and exemption cargo tanks or cargo tank motor vehicles which the registrant intends to manufacture, assemble, repair, inspect, test or certify;
- (6) A statement indicating whether the registrant employs inspectors or design certifying engineers to conduct certification, inspection or testing functions addressed by this subpart. If a disinterested party is used, the name, address and registration number of that party; and
- (7) If the registrant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 107.7 to serve as agent for service of process.

(b) In addition to the information required under paragraph (a) of this section, each person who manufactures or assembles a cargo tank or cargo tank motor vehicle must submit a copy of the manufacturer's current ASME

Certificate of Authorization for the use of the ASME "U" stamp. This requirement does not apply to an assembler who performs no welding on a cargo tank wall.

(c) In addition to the information required under paragraph (a) of this section, each person who repairs a cargo tank or cargo tank motor vehicle must submit a copy of the repair facility's current National Board Certificate of Authorization for the use of the "R" stamp or ASME Certificate of Authorization for the use of the ASME "U" stamp.

**§ 107.504 Period of registration, updates, and record retention.**

(a) Registration will be for a maximum of three years from the date of the original submission.

(b) Any correspondence with the Department must contain the registrant's name and registration number.

(c) A registration must be renewed every three years or within thirty days of reissuance of an ASME or National Board Certification, whichever occurs first, by submitting an up-to-date registration statement containing the information prescribed by § 107.503.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

- (1) Any change in the registration information submitted under § 107.503;
  - (2) Replacement of the person responsible for compliance with the requirements in § 107.503(a)(3). If this occurs, the registrant shall resubmit the required certification;
  - (3) Loss of ASME or National Board Certificate of Authorization;
- or

(4) A change in function; such as, from assembly to manufacture, an addition of a function, or a change to the types of inspections, tests or certifications of cargo tanks or cargo tank motor vehicles.

(e) Each registrant shall maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department at the location identified in § 107.503(a)(2) during such time the person is registered with the Department and for two years thereafter.

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

4. The authority citation for Part 171 continues to read as follows:



Authority: 49 App. U.S.C. 1802, 1803, 1804, and 1808; 49 CFR Part 1.

5. In § 171.2, paragraph (e) is added to read as follows:

**§ 171.2 General requirements.**

(e) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under Subpart B of this chapter, that person must perform the function in accordance with that specification, approval, or exemption, as appropriate.

6. In § 171.7, paragraphs (c)(33), (c)(34), (d)(29) and (d)(30) are added to read as follows:

**§ 171.7 Matter incorporated by reference.**

(c) \*\*\*

(33) TTMA: Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314.

(34) National Board: National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(d) \*\*\*

(29) National Board Inspection Code is titled "National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors" NB-23, Rev. 4, 1983 edition.

(30) Truck Trailer Manufacturers Association:

(i) TTMA RP No. 81 is titled "Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) TTMA TB No. 107 is titled "Procedure for Testing Inservice, Unmarked, and/or Uncertified MC 306 Type Cargo Tank Manhole Covers," May 24, 1989 edition.

7. In § 171.8, the definition of "cargo tank" is revised and definitions for "Authorized Inspector," "Authorized Inspection Agency," "Cargo tank motor vehicle," "Design certifying engineer," "Maximum Allowable Working Pressure or MAWP," and "Registered Inspector" are added in alphabetical sequence to read as follows:

**§ 171.8 Definitions and abbreviations.**

"Authorized Inspector" means an Inspector who is currently commissioned by the National Board of Boiler and Pressure Vessel Inspectors and employed as an Inspector by an Authorized Inspection Agency.

"Authorized Inspection Agency" means: (1) A jurisdiction which has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement and has a representative serving as a member of the ASME Conference Committee; or (2) an insurance company which has been licensed or registered by the appropriate authority of a State of the United States or a Province of Canada to underwrite boiler and pressure vessel insurance in such State or Province.

"Cargo tank" means a bulk packaging which—(1) Is a tank (including the appurtenances, reinforcements, fittings and closures) intended for the carriage of liquids or gases (For "tank", see §§ 178.345-1(c), 178.337-1, or 178.338-1), as applicable;

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, portable tanks, tank cars or multi-unit tank car tanks.

"Cargo tank motor vehicle" means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

"Design certifying engineer" means a person registered with the Department in accordance with Part 107, Subpart F of this chapter who is an Authorized Inspector and has the knowledge and ability to determine if a cargo tank design meets the applicable DOT specification, or a person other than an Authorized Inspector who has this ability, at least one year of work experience in structural or mechanical design and an engineering degree (such as a professional engineer registered by the appropriate authority of a State of the United States or a Province of Canada).

"Maximum Allowable Working Pressure" or "MAWP" For DOT specification cargo tanks used to transport liquid hazardous materials, see § 178.345-1(k).

"Registered Inspector" means a person registered with the Department in accordance with Part 107, Subpart F

of this chapter who is an Authorized Inspector who has the knowledge and ability to determine if a cargo tank conforms with the applicable DOT specification, or a person other than an Authorized Inspector who has this ability and, at a minimum, the following work experience, in cargo tank construction or repair, and education: one year of work experience and an engineering degree, two years of work experience and an associate degree in engineering, or three years of work experience and a high school diploma.

**PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS**

8. The authority citation for Part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

**§ 172.203 [Amended]**

9. In § 172.203, paragraph (h)(1)(i) is amended by removing the reference "§ 173.315(a)(1), Note 14" and inserting in its place the reference "§ 173.315(a), Note 15" and paragraph (h)(2)(i) is amended by removing the reference "§ 173.315(a)(1), Note 15" and inserting in its place the reference "§ 173.315(a), Note 15".

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

10. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

11. Part 173, Subpart B of the Table of Sections is amended by revising the entry for § 173.33 to read as follows:

**Subpart B—Preparation of Hazardous Materials for Transportation.**

Sec.

173.33 Hazardous materials in cargo tank motor vehicles.

12. In § 173.22, the introductory text to paragraph (a)(2) is revised and paragraph (b) is removed and reserved to read as follows:



**§ 173.22 Shipper's responsibility.**

(a) \* \* \*

(2) The person shall determine that the packaging or container is an authorized packaging, including all special requirements, and that the packaging has been manufactured, assembled, and marked in accordance with the following:

(b) [Reserved]

13. Section 173.33 is revised to read as follows:

**§ 173.33 Hazardous materials in cargo tank motor vehicles.**

(a) *General requirements.* (1) No person may offer or accept a hazardous material for transportation in a cargo tank motor vehicle except as authorized by this subchapter.

(2) Two or more materials may not be loaded or accepted for transportation in the same cargo tank motor vehicle if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors.

(3) A cargo tank motor vehicle for which the prescribed periodic retest or reinspection under Subpart E of Part 180 of this subchapter is past due may not be filled and offered for transportation until the retest or inspection has been successfully completed.

(b) *Loading requirements.* (1) A hazardous material may not be loaded in a cargo tank if during transportation any part of the tank in contact with the hazardous material lading would have a dangerous reaction with the hazardous material.

(2) A cargo tank may not be loaded with a hazardous material that will have an adverse effect on the tank's integrity or—

(i) May combine chemically with any residue or contaminants in the tank to produce an explosion, fire, excessive increase in pressure, release of toxic vapors or other unsafe condition.

(ii) Due to its density, exceeds the maximum weight of lading marked on the specification plate.

(iii) Is at a temperature outside of the design temperature range specified on the tank specification plate.

(iv) May severely corrode or react with the tank material at any concentration and temperature that will exist during transportation.

(v) Is prohibited by § 173.21 or § 173.24 of this subchapter.

(3) Air pressure may not be used to load or unload any lading if it may create an air-enriched mixture within

the flammability range of the lading in the vapor space of the tank.

(4) The loading or unloading rate used must be less than or equal to that indicated on the cargo tank specification plate, except as specified in § 173.318(b)(6). If no loading or unloading rate is marked on the specification plate, the loading or unloading rate and pressure used must be limited such that the pressure in the tank may not exceed 130% of the MAWP.

(c) *Maximum Lading Pressure.* (1) Prior to filling and offering a cargo tank motor vehicle for transportation, the person must confirm that the cargo tank motor vehicle conforms to the specification required for the lading and that the MAWP of the cargo tank is greater than or equal to the largest pressure obtained under the following conditions:

(i) For compressed gases and certain refrigerated liquids that are not cryogenic liquids, the pressure prescribed in § 173.315 of this subchapter.

(ii) For cryogenic liquids, the pressure prescribed in § 173.318 of this subchapter.

(iii) For liquid hazardous materials shipped in DOT specification cargo tanks equipped with a 1 psig normal vent, the sum of the tank static head plus 1 psig. In addition, for hazardous materials shipped in these cargo tanks, the vapor pressure of the lading at 115 °F. must be not greater than 1 psig, except for gasoline transported in accordance with § 173.119(a)(17)(iii).

(iv) For liquid hazardous materials not covered in paragraph (c)(1)(i), (ii), or (iii) of this section, the sum of the vapor pressure of the lading at 115 °F. plus the tank static head exerted by the lading, plus any pressure exerted by the gas padding, including air in the ullage space or dome.

(v) The pressure prescribed in Subpart B, D, E, F, G, or H of this part, as applicable.

(vi) The maximum pressure used to load or unload the lading.

(2) Any Specification MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank motor vehicle with no marked design pressure or marked with a design pressure of 2.65 psig or less may be used for an authorized lading where the largest pressure derived from § 173.33(c) or § 178.345-1(k) of this subchapter is less than or equal to 2.65 psig. These cargo tanks must be marked or remarked with an MAWP or design pressure in accordance with § 180.405(k).

(3) Any Specification MC 310 or MC 311 cargo tank motor vehicle may be

used for an authorized lading where the largest pressure derived from § 173.33(c) or § 178.345-1(k) of this subchapter is less than or equal to the MAWP or MWP, respectively, as marked on the specification plate.

(4) Any cargo tank manufactured prior to December 12, 1989, marked with a design pressure rather than an MAWP may be used for an authorized lading where the largest pressure derived from § 173.33(c) is less than or equal to the design pressure marked on the cargo tank.

(5) Any material that meets the definition of a Poison B material must be shipped in a cargo tank motor vehicle having a MAWP of 25 psig or greater.

(d) *Relief system.* (1) A non-reclosing pressure relief device, except when installed in series with a reclosing pressure relief valve, may not be fitted in a cargo tank used to transport hazardous materials. However, a cargo tank constructed before December 12, 1989, that is fitted with one or more non-reclosing pressure relief devices installed parallel to one or more reclosing pressure relief valves may continue to be used in hazardous material service for which the cargo tank was authorized on December 12, 1989. The requirements in this paragraph do not apply to MC 338 cargo tank motor vehicles transporting a cryogenic liquid or to MC 330, MC 331 and MC 338 cargo tank motor vehicles transporting a material described in part as a refrigerated liquid in § 172.101 of this subchapter.

(2) Each cargo tank used to transport a liquid hazardous material in its gaseous state must have a pressure relief system that provides the venting capacity prescribed in § 178.345-10(e) of this subchapter.

(3) A cargo tank made to a specification listed in column 1 may be upgraded or have the relief devices or outlets modified to meet the applicable requirement for the specification listed in column 2 without changing the markings on the tank specification plate.

Column 1	Column 2
MC 300, MC 301, MC 302, MC 303, MC 305, MC 306.....	MC 306 or DOT 406.
MC 304.....	DOT 406.
MC 307.....	MC 307 or DOT 407.
MC 310, MC 311.....	DOT 407.
MC 312.....	MC 312 or DOT 412.
MC 330.....	DOT 412.
	MC 331.

(e) *Fuel metered for road fuel tax purposes.* Notwithstanding the requirements in § 178.345-8(a), specification cargo tanks without



bottom damage protection devices, used for the transportation of fuel metered for road fuel tax purposes may be transported with bottom product filling/discharge piping filled with such fuels, provided that:

(1) Each internal self-closing stop valve is provided with a sacrificial device (see § 178.345-1), such as a shear section, located in the piping system outboard of the stop valve;

(2) The inside diameter of any piping does not exceed 4½ inches; and

(3) The aggregate volume of all piping on the cargo tank motor vehicle does not exceed 50 gallons.

14. In § 173.119, paragraphs (m)(11) and (m)(12) are removed and reserved; the introductory text of paragraphs (a) and (b), and paragraphs (a)(17), (b)(1), (e)(3), and (m)(10) are revised to read as follows:

**§ 173.119 Flammable liquids not specifically provided for.**

(a) *Flammable liquids with flash point of 20 °F. or below.* Flammable liquids with flash points of 20 °F., or below and having a vapor pressure (Reid<sup>1</sup> test) not over 16 psia, at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in DOT specification packagings constructed of materials that will not react dangerously with or be decomposed by the chemical packed therein as required in the following paragraphs (see paragraphs (c) to (i) of this section for high pressure liquids, paragraphs (j) to (l) of this section for viscous liquids, and paragraph (m) of this section for flammable liquids which are also oxidizers, radioactive material, corrosive liquids, poison B liquids, or organic peroxides and § 173.134 for flammable liquids that are also pyrophoric liquids):

(17) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 406, DOT 407, DOT 412 MC 330, or MC 331 (§§ 178.345, 178.346, 178.347, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank is equipped with a pressure relief system meeting the requirements in § 178.346-10 or § 178.347-10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

(ii) Bottom outlets of the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in

§ 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter. (See § 173.33(b)(3) for limitations on the use of air pressure unloading.)

(iii) MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, and DOT 406 cargo tanks equipped with a 1 psig normal vent used to transport gasoline are subject to the following requirements. Based on the volatility class determined by using ASTM D439 and the Reid vapor pressure (RVP) of the particular gasoline, the maximum lading pressure and maximum ambient temperature permitted during the loading of gasoline may not exceed that listed in Table I.

TABLE I.—MAXIMUM AMBIENT TEMPERATURE—GASOLINE

ASTM D439 volatility class	Maximum lading and ambient temperature (see note 1)
A..... (RVP ≤ 9.0 psia)	131 °F
B..... (RVP ≤ 10.0 psia)	124 °F
C..... (RVP ≤ 11.5 psia)	116 °F
D..... (RVP ≤ 13.5 psia)	107 °F
E..... (RVP ≤ 15.0 psia)	100 °F

NOTE 1: Based on maximum lading pressure of 1 psig at top of cargo tank.

(b) *Flammable liquids with flash points above 20 °F. to 73 °F.* Flammable liquids with flash points above 20 °F. to 73 °F. having vapor pressure (Reid<sup>1</sup> test) not over 16 psia at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in DOT specification packagings constructed of materials that will not react dangerously with or be decomposed by the chemical packed therein, as follows (see paragraphs (c) through (i) of this section for high-pressure liquids and paragraph (m) of this section for flammable liquids which are also oxidizers, poison B liquids, organic peroxides or corrosive liquids):

(1) Packagings as prescribed in paragraph (a) of this section. Openings greater than 2.3 inches in diameter in barrels and drums are authorized when permitted by the specification.

(3) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.347,

178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure or MAWP of the cargo tank is at least 25 psig.

(ii) Each cargo tank is equipped with a pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

(iii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(m) \* \* \*  
(10) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.347, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank may not be used to transport a flammable liquid which is also an organic peroxide, oxidizer or radioactive material.

(ii) Any cargo tank used to transport a flammable liquid that is also a poison B material has a design pressure or MAWP of at least 25 psig.

(iii) Any cargo tank used to transport a flammable liquid that is also a corrosive liquid, except Specification MC 330 or MC 331 cargo tanks, meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iv) Each cargo tank is equipped with a pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

(v) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(11)-(12) [Reserved]

15. In § 173.123, paragraph (a)(6) is revised to read as follows:

**§ 173.123 Ethyl chloride.**

(a) \* \* \*

<sup>1</sup> ASTM Test D323



(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, with bottom outlets equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

16. In § 173.131, paragraphs (a) introductory text and (a)(2) are revised to read as follows:

**§ 173.131 Road asphalt, or tar, liquid.**

(a) Road asphalt, or tar, liquid must be packed in packaging as follows:

(2) A nonspecification cargo tank motor vehicle that is at least equivalent in design and construction to a Specification MC 306 or DOT 406 (§§ 178.345, 178.346 of this subchapter) cargo tank motor vehicle, except for the requirements in §§ 178.345-8 (c) and (d), 178.345-14, 178.345-15, 178.346-5, 178.346-10, and 178.346-11 of this subchapter (or the certification, manhole, venting, and emergency flow control requirements of the MC 306 cargo tank specification).

17. In § 173.134, paragraph (a)(6) is revised to read as follows:

**§ 173.134 Pyroforic liquids, n.o.s.**

(a) \* \* \*  
(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

- (i) The design pressure of the cargo tank is at least 175 psig.
- (ii) Each pressure relief device has direct communication with the vapor space in the tank when fully loaded.
- (iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

18. In § 173.135, paragraph (a)(9) is revised to read as follows:

**§ 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.**

(a) \* \* \*  
(9) Specification MC 304, MC 307, DOT 407, MC 330 or MC 331 (§§ 178.345, 178.347, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

- (i) The cargo tank is fabricated from steel or stainless steel.
- (ii) The design pressure or MAWP of the cargo tank is as prescribed in § 178.345-1 of this subchapter.
- (iii) The cargo tank, except Specification MC 330 and MC 331 cargo tanks, meets the corrosion protection

requirements in §§ 178.345-2(c) of this subchapter.

(iv) The cargo tank is equipped with a pressure relief system meeting the requirements in 178.347-10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

(v) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

19. In § 173.136, paragraph (a)(8) is revised to read as follows:

**§ 173.136 Methyl dichlorosilane and trichlorosilane.**

(a) \* \* \*  
(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle. Bottom outlets must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

20. In § 173.141, paragraph (a)(8) is revised to read as follows:

**§ 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.**

(a) \* \* \*  
(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle. Bottom outlets must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

21. In § 173.145, paragraph (a)(7) is revised to read as follows:

**§ 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.**

(a) \* \* \*  
(7) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.347, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

- (i) The cargo tank is fabricated from steel or stainless steel.
- (ii) The tank is equipped with steel pressure relief valves meeting the requirements in § 178.347-10 of this subchapter.
- (iii) The cargo tank meets the corrosion protection requirements in

§ 178.345-2(c) or § 178.347 of this subchapter.

(iv) The cargo tank has no bottom outlets.

(v) The design pressure or MAWP of the cargo tank is at least 25 psig.

22. In § 173.148, paragraph (a)(5) is revised to read as follows:

**§ 173.148 Monoethylamine.**

(a) \* \* \*  
(5) Any cargo tank motor vehicle prescribed in § 173.119(e)(3).

23. In § 173.154, paragraph (a)(18) is removed and reserved; and paragraph (a)(4) is revised to read as follows:

**§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.**

(a) \* \* \*  
(4) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 406, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.346, 178.347, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Cargo tanks are authorized only for—

(A) Sodium perchlorate or magnesium perchlorate, wet, with 10 percent or more water, equally distributed within the cargo tank;

(B) Potassium nitrate solutions, except that MC 306 cargo tanks are not authorized; or

(C) Ammonium nitrate with 15 percent of more water in solution at a maximum temperature of 240 °F., except that transportation by vessel in uninsulated tanks and MC 303, MC 306, MC 310 and DOT 406 cargo tank motor vehicles is not authorized.

(iii) Bottom outlets on the cargo tank are equipped with stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(iv) Only a Specification MC 304, MC 307 or DOT 407 cargo tank motor vehicle is authorized for transportation by vessel.

(v) A cargo tank may have heating coils if an inorganic heating medium is used.

(vi) Each MC 310, MC 311, MC 312, or DOT 412 cargo tank is equipped with pressure relief devices meeting the requirements in § 178.347-10 of this subchapter.



(18) [Reserved]

24. In § 173.190, paragraph (b)(4) is revised to read as follows:

**§ 173.190 Phosphorus, white or yellow.**

(b) \* \* \*

(4) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.337, 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is completely immersed in water or completely blanketed with an inert gas. The loading temperature may not exceed 140 °F.

(ii) The cargo tank has foam or equivalent insulation at least 4 inches thick, or at least 2 inches thick if the tank is equipped with an exterior heating jacket. The cargo tank has no interior heating coils.

(iii) The cargo tank has no bottom outlets.

(iv) Each cargo tank is equipped with pressure relief devices meeting the requirements in § 178.347-10 of this subchapter.

(v) An empty cargo tank motor vehicle may not be offered for transportation unless the tank is cleaned, or is filled to capacity with water having a temperature not exceeding 140 °F.

25. In § 173.206, paragraph (c)(3) is revised to read as follows:

**§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon, lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.**

(c) \* \* \*

(3) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The material is in a molten condition when loaded and solidified before being moved over a public highway.

(ii) The outage is 5 percent or more at a sodium temperature of 208 °F.

(iii) The design pressure of the cargo tank is at least 150 psig.

(iv) The tank is equipped with exterior heating coils fusion-welded to the tank shell and properly stressed relieved.

(v) The cargo tank is equipped with pressure relief devices meeting the requirements in § 178.337.9 of this subchapter.

(vi) The cargo tank has no bottom outlets.

26. In § 173.224, paragraph (a)(4) is revised to read as follows:

**§ 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.**

(a) \* \* \*

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Cargo tanks are authorized only for—

(A) Diisopropylbenzene hydroperoxide not over 60 percent strength in a nonvolatile solvent;

(B) Paramenthane hydroperoxide not over 60 percent strength in a nonvolatile solvent;

(C) Pinane hydroperoxide not over 45 percent strength in a nonvolatile solvent; or

(D) Cumene hydroperoxide not over 90 percent strength in a nonvolatile solvent, except that specification MC 310 cargo tanks are not authorized.

(iii) The cargo tank has no bottom outlets.

(iv) The pressure relief system on the cargo tank meets the requirements in § 178.347-10 of this subchapter.

27. In § 173.245, paragraphs (a)(30) and (a)(31) are removed and reserved; paragraph (a)(29) is revised to read as follows:

**§ 173.245 Corrosive liquids not specifically provided for.**

(a) \* \* \*

(29) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A Specification MC 303 or MC 306 cargo tank fabricated from Type 316 stainless steel not less than 0.100 inch thick is authorized only for monoethanolamine, *primary amyl alcohol*, phosphoric acid, and solutions thereof.

(ii) A Specification MC 306 cargo tank fabricated of aluminum is authorized only for monoethanolamine and *primary amyl alcohol*.

(iii) The cargo tank meets the corrosion protection requirements in § 178.345.2(c) of this subchapter.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-

valves meeting the requirements in § 178.345-11 of this subchapter.

(30)-(31) [Reserved]

28. In § 173.247 paragraph (a)(12) is revised to read as follows:

**§ 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimethyl acetyl chloride.**

(a) \* \* \*

(12) Specification MC 310, MC 311, MC 312, DOT 412, MC 330, or MC 331 (§§ 178.345, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(iii) The cargo tank is not made of aluminum.

29. In § 173.247a, paragraph (a)(3) is revised to read as follows:

**§ 173.247a Vanadium tetrachloride and vanadium oxytrichloride.**

(a) \* \* \*

(3) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tanks are authorized only for vanadium oxytrichloride padded with an inert non-soluble gas adequate to exclude the presence of air.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) Bottom outlets on the cargo tank are equipped with stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(iv) The tank is not authorized for transportation by vessel.

(v) The cargo tank is not made of aluminum.

30. In § 173.248, paragraph (a)(6) is revised to read as follows:



**§ 173.248 Spent sulfuric acid, or spent mixed acid.**

(a) \* \* \*

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, if—

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with stop valves meeting the requirements in § 178.345-11 of this subchapter.

31. In § 173.249, paragraphs (a)(1) and (a)(6) are revised to read as follows:

**§ 173.249 Alkaline corrosive liquids, n.o.s.; alkaline liquids, n.o.s.; alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution; potassium hydroxide solution.**

(a) \* \* \*

(1) In packagings prescribed in § 173.245, except § 173.245(a)(29).

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A Specification MC 303 cargo tank—

(A) Is fabricated from steel or stainless steel;

(B) When fabricated of steel, is authorized only for alkaline corrosive liquid, n.o.s., and alkaline liquid, n.o.s.; and

(C) Is not authorized for transportation by vessel.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) A Specification MC 306 cargo tank is fabricated from Type 316 stainless steel of not less than 0.100 inch thick.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

32. In § 173.249a, paragraph (d)(1) is revised and a new paragraph (d)(6) is added to read as follows:

**§ 173.249a Cleaning compound, liquid; coal tar dye, liquid; dye intermediate, liquid; mining reagent, liquid; and textile treating compound mixture, liquid.**

(d) \* \* \*

(1) In specification packaging as prescribed in § 173.245, except § 173.245(a)(29).

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412

(§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) A Specification MC 303 cargo tank is made from steel or stainless steel. The cargo tank is not authorized for transportation by vessel.

(iii) A Specification MC 306 cargo tank is fabricated from Type 316 stainless steel of not less than 0.100 inch thick. The cargo tank is not authorized for transportation by cargo vessel.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

33. In § 173.250a, paragraphs (a)(1) and (a)(2) are revised to read as follows:

**§ 173.250a Benzene phosphorus dichloride and benzene phosphorus trichloride.**

(a) \* \* \*

(1) In specification packagings prescribed in § 173.245, except § 173.245(a)(29), which are made of or lined with materials compatible with the lading.

(2) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

34. In § 173.252, paragraph (a)(4) is revised to read as follows:

**§ 173.252 Bromine.**

(a) \* \* \*

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The total volume of bromine loaded into the cargo tank is at least 88 percent and not more than 96 percent of the volume of the tank.

(ii) The tank shell and heads are at least 3/8 inch thick, excluding lining, cladding or corrosion allowance.

(iii) The tank is of ASTM A-265 material having a nickel cladding material on the inside surface comprising at least 20 percent of the total minimum thickness, or steel at

least 3/8 inch thick lined with lead at least 3/16 inch thick. The cladding material must meet the requirements in ASTM B-162. The composite plate must meet the requirements in ASTM A-265.

(iv) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(v) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

35. In § 173.253, paragraph (a)(6) is revised to read as follows:

**§ 173.253 Chloroacetyl chloride.**

(a) \* \* \*

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is fabricated from at least 99 percent nickel, or Type 316 stainless steel.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

36. In § 173.254, paragraph (a)(5) is revised to read as follows:

**§ 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.**

(a) \* \* \*

(5) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

37. In § 173.255, paragraph (a)(5) is revised to read as follows:

**§ 173.255 Dimethyl sulfate.**

(a) \* \* \*

(5) Cargo tank motor vehicles as prescribed in § 173.254(a)(5).

38. In § 173.257, paragraph (a)(4) is revised to read as follows:

**§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.**

(a) \* \* \*



(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

39. In § 173.262, paragraphs (a)(11) and (b)(4) are revised to read as follows:

**§ 173.262 Hydrobromic acid.**

(a) \* \* \*

(11) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(b) \* \* \*

(4) Cargo tank motor vehicles as prescribed in paragraph (a)(11) of this section.

40. In § 173.263, paragraph (a)(10) is revised to read as follows:

**§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited, sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.**

(a) \* \* \*

(10) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance, except that an unlined tank made from Type 304 or Type 316 stainless steel is authorized for sodium chlorite solutions not exceeding 42 percent strength.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

41. In § 173.264, Note 1 to paragraph (a)(14) is removed; paragraphs (a)(14) and (b)(3) are revised to read as follows:

**§ 173.264 Hydrofluoric acid; White acid.**

(a) \* \* \*

(14) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance, except that an unlined cargo tank is authorized for hydrofluoric acid solutions of 60 percent to 65 percent concentration provided the lading is inhibited so that the corrosive effect on steel is not greater than that of 65 percent hydrofluoric acid.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(b) \* \* \*

(3) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle. Bottom outlets on the cargo tank must be equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

42. In § 173.265, paragraph (b)(4) is revised to read as follows:

**§ 173.265 Fluorosilicic acid (hydrofluorosilicic acid) (hydrofluosilicic acid).**

(b) \* \* \*

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

43. In § 173.266, paragraph (f)(2) is revised to read as follows:

**§ 173.266 Hydrogen peroxide solution in water.**

(f) \* \* \*

(2) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is fabricated—  
(A) From aluminum meeting the requirements of Aluminum Association designation 1060, 1260, 5254 or 5262 alloy, and with a minimum wall thickness of 0.500 inches; or

(B) An MC 312 cargo tank may be fabricated of Type 304L, 316 or 316L stainless steel.

(ii) The MAWP of the cargo tank is at least 40 psig.

(iii) The tank is designed and fabricated so that the internal surfaces can be effectively cleaned and passivated. All openings are located on the top of the tank.

(iv) The cargo tank has no bottom outlets.

(v) A cargo tank in hydrogen peroxide service is used in hydrogen peroxide service only and the cargo tank specification plate is so marked. In addition to the required markings, prescribed in § 172.328 of this subchapter, each such cargo tank is marked in letters at least 1 inch high "FOR HYDROGEN PEROXIDE SERVICE ONLY".

(iv) The designs for venting and pressure relief devices have been examined by the Bureau of Explosives and approved by the Director, OHMT.

44. In § 173.267, paragraph (a)(7) is revised to read as follows:

**§ 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).**

(a) \* \* \*

(7) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

45. In § 173.268, paragraph (b)(3) is revised to read as follows:

**§ 173.268 Nitric acid.**

(b) \* \* \*

(3) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

46. In § 173.271, paragraph (a)(8) is revised to read as follows:

**§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.**

(a) \* \* \*

(8) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicles, subject to the following conditions:

(i) The tank is—

(A) Fabricated from mild steel, stainless steel or at least 99 percent nickel (with cast metal parts of tank in contact with lading at least 96.7 percent nickel);

(B) Clad with Type 316 stainless steel at least 20 percent as thick as the parent metal; or

(C) Lined with lead at least 1/32 inch thick or lined with at least 99 percent



pure nickel at least  $\frac{1}{32}$  inch thick at all points including rivets, welds and other joints, and edges of tank plates.

(ii) A tank fabricated from, or clad with, Type 316 stainless steel is authorized only for phosphorous oxychloride, phosphorous trichloride, and thiophosphoryl chloride.

(iii) A tank fabricated from mild steel or austenitic stainless steel, without cladding or lining, is authorized only for phosphorous trichloride service.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

47. In § 173.272, paragraphs (i)(25) and (i)(28) are removed and reserved; paragraphs (c), (d), (e), (f) and (i)(21) are revised to read as follows:

**§ 173.272 Sulfuric acid.**

(c) *Concentrations of 51 percent or less.* Authorized packagings for sulfuric acid at concentrations of 51 percent or less are prescribed in paragraphs (i) (1)-(16), (21), (24), and (26) of this section.

(d) *Concentrations of greater than 51 percent to not over 65.25 percent.* Authorized packagings for sulfuric acid at concentrations of 51 percent to not over 65.25 percent are prescribed in paragraphs (i) (1)-(16), (21), and (27)-(29) of this section.

(e) *Concentrations of greater than 65.25 percent to not over 77.5 percent.* Authorized packagings for sulfuric acid at concentrations of 65.25 percent to not over 77.5 percent are prescribed in paragraphs (i) (1)-(16), (20)-(22), and (29) of this section.

(f) *Concentrations of greater than 77.5 percent to not over 95 percent.* Authorized packagings for sulfuric acid concentrations of 77.5 percent to not over 95 percent are prescribed in paragraphs (i)(1)-(22), and (29) of this section.

(g) *Concentrations of greater than 95 percent to not over 100.5 percent.* Authorized packagings for sulfuric acid concentrations of greater than 95 percent to not over 100.5 percent are prescribed in paragraphs (i)(1)-(4), (6), (9), (14)-(22), and (29) of this section.

(h) *Concentrations of over 100.5 percent.* Authorized packagings for sulfuric acid concentrations of over 100.5 percent are prescribed in paragraphs (i) (1)-(4), (17), and (19)-(23) of this section.

(i) \* \* \*

(21) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor

vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) An unlined steel cargo tank is authorized for sulfuric acid of 65.25 percent or greater concentration, provided the corrosive effect on steel is not greater than that of 65.25 percent sulfuric acid measured at 100 °F.

(iii) The temperature of the lading may not exceed the design temperature of the cargo tank marked on the cargo tank specification plate.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(25) [Reserved]

(28) [Reserved]

48. In § 173.273, paragraphs (a)(5) and (b)(2) are revised to read as follows:

**§ 173.273 Sulfur trioxide.**

(a) \* \* \*

(5) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is equipped with a pressure relief system meeting the requirements in § 178.345-10 of this subchapter and consisting of a spring-loaded pressure relief valve, or a combination spring-loaded pressure relief valve and a frangible (rupture disk) installed in series with the relief valve. When the pressure relief system consists of a spring-loaded pressure relief valve and a frangible (rupture disk) installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 125 percent of the design pressure.

(ii) The tank is not equipped with interior heating coils.

(iii) Bottom outlets on the cargo tank are equipped with self-closing stop valves meeting the requirements in § 178.345-11 of this subchapter.

(b) \* \* \*

(2) Specification MC 311, MC 312, DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is insulated.

(ii) The tank is not equipped with interior heating coils.

(iii) The cargo tank is equipped with a pressure relief system meeting the requirements in § 178.345-10 of this

subchapter and consisting of a spring-loaded pressure relief valve, or a combination spring-loaded pressure relief valve and a frangible (rupture) disk installed in series with the relief valve. When the pressure relief system consists of a spring-loaded pressure relief valve and a frangible (rupture) disk installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 125 percent of the design pressure.

49. In § 173.274, paragraph (a)(4) is revised to read as follows:

**§ 173.274 Fluosulfonic acid.**

(a) \* \* \*

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle. Bottom outlets must be equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter

50. In § 173.276, paragraph (a)(6) is revised to read as follows:

**§ 173.276 Anhydrous hydrazine and hydrazine solution.**

(a) \* \* \*

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is fabricated from Type 304 or Type 347 stainless steel with molybdenum content not exceeding 1 percent.

(ii) The vapor space in the cargo tank is filled with nitrogen gas at not less than atmospheric pressure.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(c) of this subchapter.

51. In § 173.277, paragraph (a)(9) is revised to read as follows:

**§ 173.277 Hypochlorite solutions.**

(a) \* \* \*

(9) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:



(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

(iii) Continued use of nonspecification cargo tanks is authorized only if they were used to transport hypochlorite solutions prior to January 1, 1983.

52. In § 173.280, paragraph (a)(8) is revised to read as follows:

**§ 173.280 Trichlorosilanes.**

(a) \* \* \*

(8) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is made of steel or stainless steel.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

53. In § 173.287, paragraph (b)(8) is revised to read as follows:

**§ 173.287 Chromic acid solution.**

(b) \* \* \*

(8) Any cargo tank motor vehicle prescribed in § 173.254(a)(5), except that the cargo tanks are not authorized for transportation by vessel.

54. In § 173.289, paragraphs (a)(1) and (a)(4) are revised to read as follows:

**§ 173.289 Formic acid and formic acid solutions.**

(a) \* \* \*

(1) In packagings prescribed in § 173.245, except § 173.245(a)(14) and (a)(29) and DOT 5A steel drum.

(4) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

55. In § 173.292, paragraphs (a)(1) and (a)(2) are revised to read as follows:

**§ 173.292 Hexamethylene diamine solution.**

(a) \* \* \*

(1) In packagings as prescribed in § 173.249, except § 173.249(a)(6).

(2) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312 or, DOT 406, DOT 407, DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) A Specification MC 306 or DOT 406 cargo tank is fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iii) A Specification MC 303 cargo tank is fabricated from steel or stainless steel.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

56. In § 173.294, paragraph (a)(3) is revised to read as follows:

**§ 173.294 Monochloroacetic acid, liquid or solution.**

(a) \* \* \*

(3) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is fabricated from Type 304 or Type 316 stainless steel, 99 percent pure nickel plates, titanium meeting the requirements in ASTM SA-265, or is suitably lined with nickel or stainless steel.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

57. In § 173.295, paragraph (a)(10) is removed and reserved; paragraph (a)(9) is revised to read as follows:

**§ 173.295 Benzyl chloride.**

(a) \* \* \*

(9) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A tank fabricated of steel is used to transport stabilized benzyl chloride.

(ii) A tank fabricated from at least 99 percent nickel is used for unstabilized benzyl chloride that is anhydrous and free from impurities such as iron. All cast metal parts of the tank in contact with the lading are fabricated from at least 96.7 percent nickel.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

(10) [Reserved]

58. In § 173.296, paragraph (a)(2) is revised to read as follows:

**§ 173.296 Diisooctyl acid phosphate.**

(a) \* \* \*

(2) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

59. In § 173.297, paragraph (a)(1) is revised to read as follows:

**§ 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.**

(a) \* \* \*

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank is rubber-lined.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

60. In § 173.315, the introductory text of paragraph (a), and Note 4 and paragraph 5 of Note 17 which follows the table in paragraph (a) are revised; and paragraphs (h)(4), (i)(1) and (k)(5) are revised; and paragraphs (n) and (o) are added to read as follows:

**§ 173.315 Compressed gases in cargo tanks and portable tanks.**

(a) A compressed gas offered for transportation in a cargo tank motor vehicle or a portable tank must be prepared in accordance with this section, §§ 173.32, 173.33 and Subpart E of Part 180 of this subchapter; for cryogenic liquids, see § 173.318; for marking requirements, see § 172.326 and 172.328 of this subchapter. A compressed gas must be loaded and offered for transportation in accordance with the following table:

**Note 4:** Material must be steel. Tank must have a corrosion allowance of 20 percent or 0.10 inch, whichever is less, added to the metal thickness. In chlorine tanks, the wall thickness must be at least 0.625 inch including corrosion allowance.

**Note 17 \* \* \***

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks.

(h) \* \* \*

(4) Except on a tank used exclusively for the transportation of carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid, each opening for a pressure gauge must be restricted at or inside the tank by an orifice no larger than 0.060 inch in diameter. For carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service, the



pressure gauge need only be used during the filling operation.

(i) \* \* \*

(1) The safety relief valves on each tank must meet the following conditions:

(i) The total relieving capacity, as determined by the flow formulas contained in Section 5 of CGA Pamphlet S-1.2, must be sufficient to prevent a maximum pressure in the tank of more than 120 percent of the design pressure;

(ii) The flow capacity testing and rating must be in accordance with Section 5 of CGA Pamphlet S-1.2 and certified by the valve manufacturer.

(iii) For an insulated tank, the required relieving capacity of the relief valves must be the same as for an uninsulated tank, unless the insulation will remain in place and will be effective under fire conditions. In this case, each insulated tank must be covered by a sheet metal jacket of not less than 16 gauge thickness.

(iv) An MC 330 cargo tank that has relief valves sized by Fetterly's formula dated November 27, 1928, may be continued in service. Copies of this formula may be obtained from the Bureau of Explosives.

\* \* \*

(k) \* \* \*

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks;

\* \* \*

(n) Each MC 330 and MC 331 cargo tank used to transport a flammable gas, anhydrous ammonia or hydrogen chloride, refrigerated liquid must have each liquid opening equipped in accordance with § 178.337-11 of this subchapter.

(o) *Chlorine cargo tanks.* Each cargo tank motor vehicle used for the transportation of chlorine must meet the requirements in the following:

(1) No piping, hose, or other device for loading or unloading may be attached to any valve, except at the time of loading or unloading. No hose, piping, or tubing used for loading or unloading may be mounted or carried on the motor vehicle. Except at the time of loading or unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter once every five loadings or once a week, which ever occurs first. Prior to each loading, the cargo tank must be inspected and the angle valves and gasketed joints must be examined

and tested at a pressure of not less than 50 psig to determine that they are not leaking and are in proper condition for transportation. Any leaks must be corrected before the cargo tank is offered for transportation.

(3) Excess flow valves on the cargo tank must meet the requirements in § 178.337-11(a)(4) of this subchapter.

61. In § 173.318, paragraphs (b)(2)(i)(C) and (g)(3), and a sentence at the end of paragraph (a)(2)(ii) are added to read as follows:

**§ 173.318 Cryogenic liquids in cargo tanks.**

\* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) The flow capacity and rating must be verified and certified by the manufacturer.

(ii) \* \* \* The flow capacity and rating must be verified and certified by the manufacturer of the device.

\* \* \*

(g) \* \* \*

(3) Each cargo tank motor vehicle used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. The record required by § 177.840(h) of this subchapter may be used for this determination. If the examination indicates that the actual holding time of the cargo tank, after adjustment to reflect an average ambient temperature of 85 °F, is less than 90 percent of the marked rated holding time (MRHT) for the cryogenic liquid marked on the specification plate or adjacent thereto (see § 178.338-18(b) of this subchapter), the tank may not be refilled with any flammable cryogenic liquid until it is restored to its marked rated holding time value or it is re-marked with the actual marked rated holding time determined by this examination. If the name of the flammable cryogenic liquid that was transported and its marked rated holding time is not displayed on or adjacent to the specification plate, this requirement may be met by deriving the MRHT of the cargo tank for that flammable cryogenic liquid and comparing that derived MRHT with the actual holding time after adjustment.

62. In § 173.346, paragraph (a)(12) is revised to read as follows:

**§ 173.346 Poison B liquids not specifically provided for.**

(a) \* \* \*

(12) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348, 178.337 of this subchapter) cargo tank

motor vehicle subject to the following conditions:

(i) The design pressure of the cargo tank is at least 25 psig.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(iii) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

\* \* \*

63. In § 173.347, paragraph (a)(3) is revised to read as follows:

**§ 173.347 Aniline oil.**

(a) \* \* \*

(3) Any cargo tank motor vehicle prescribed in § 173.346(a)(12).

\* \* \*

64. In § 173.352, paragraph (a)(5) is revised to read as follows:

**§ 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s.**

(a) \* \* \*

(5) Any cargo tank motor vehicle prescribed in § 173.346(a)(12), except that the tank is at least 0.250 inch thick and the tank has no bottom outlets.

\* \* \*

65. In § 173.353, paragraph (e) is revised to read as follows:

**§ 173.353 Methyl bromide and methyl bromide mixtures.**

\* \* \*

(e) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(1) The design pressure of the cargo tank is at least 250 psig.

(2) The tank has sufficient outage so that it will not become liquid full with lading at 130° F.

(3) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

66. In § 173.354, Note 1 and footnote 1 are removed, and paragraph (a)(5) is revised to read as follows:

**§ 173.354 Motor fuel antiknock compound or tetraethyl lead.**

(a) \* \* \*



(5) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle are authorized for motor fuel antiknock compound only.

67. In § 173.358, paragraph (a)(14) is revised to read as follows:

**§ 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.**

(a) \* \* \*

(14) Specification MC 310, MC 311, MC 312, DOT 412, MC 330, or MC 331 (§§ 178.345, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is under no pressure except its own vapor pressure.

(ii) Only a Specification MC 330 or MC 331 cargo tank is authorized for hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate or tetraethyl pyrophosphate, liquid.

(iii) Each Specification MC 310, MC 311, MC 312 or DOT 412 cargo tank has a minimum shell and head thickness of 0.187 inch for a steel tank and 0.266 inch for an aluminum tank. The tank is designed for a lading weight of at least 13 pounds per gallon.

(iv) The design pressure of the cargo tank is at least 25 psig.

(v) Transportation is authorized by private motor carrier only.

(vi) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(vii) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

68. In § 173.359, paragraph (a)(16) is revised to read as follows:

**§ 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures, organic phosphate compound mixtures; parathion mixtures, tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).**

(a) \* \* \*

(16) Specification MC 310, MC 311, MC 312, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.348, 178.337 of this

subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is under no pressure except its own vapor pressure.

(ii) Each Specification MC 310, MC 311, MC 312 and DOT 412 cargo tank has a minimum shell and head thickness of 0.187 inch for a steel tank and 0.266 inch for an aluminum tank. The tank is designed for a lading weight of at least 13 pounds per gallon.

(iii) The design pressure of the cargo tank is at least 25 psig.

(iv) Transportation is authorized by private motor carrier only.

(v) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(vi) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.345-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in the § 178.337-9 of this subchapter.

69. In § 173.369, paragraph (a)(14) is revised to read as follows:

**§ 173.369 Carbolic acid (phenol), not liquid.**

(a) \* \* \*

(14) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The MAWP of the cargo tank is at least 25 psig.

(ii) The tank has sufficient outage so that it will not become liquid full with lading at 130° F.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

70. In § 173.373, paragraph (a)(6) is revised to read as follows:

**§ 173.373 Ortho-nitroaniline and paranitroaniline.**

(a) \* \* \*

(6) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tanks are authorized only for ortho-nitroaniline loaded in a liquefied state at a temperature not over 180 °F.

(ii) Each cargo tank is made of steel and is insulated.

(iii) The MAWP of the cargo tank is at least 25 psig.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

(v) The tanks are not authorized for transportation by vessel.

71. In § 173.374, paragraph (a)(4) is revised to read as follows:

**§ 173.374 Nitrochlorobenzene, meta or para.**

(a) \* \* \*

(4) Specification MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tanks are authorized only for para nitrochlorobenzene, solid.

(ii) Each cargo tank is insulated and equipped with heating coils.

(iii) The MAWP of the cargo tank is at least 25 psig.

(iv) The tanks are not authorized for transportation by vessel.

(v) Bottom outlets on the cargo tank meet the requirements in § 178.345-11(a)(1) of this subchapter.

## PART 176—CARRIAGE BY VESSEL

72. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to Part 1.

73. In § 176.76, a sentence is added at the end of paragraph (b) to read as follows:

**§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.**

(b) \* \* \* A cargo tank motor vehicle containing hazardous materials may be transported—

(1) On a carfloat or trailership if the material is authorized aboard a cargo vessel by § 172.101 of this subchapter; or

(2) On a passenger ferry vessel or railroad car ferry vessel if the material is authorized aboard a passenger vessel by § 172.101 of this subchapter.

## PART 177—CARRIAGE BY PUBLIC HIGHWAY

74. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1.

75-76. Sections 177.800, 177.801, and 177.802 are revised to read as follows:



**§ 177.800 Purpose and scope.**

(a) This part prescribes requirements, in addition to those contained in Parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common or contract carriers by motor vehicle.

(b) It is the duty of each motor carrier to comply with the prescribed regulations and to thoroughly instruct employees in relation thereto.

**§ 177.801 Unacceptable hazardous materials shipments.**

No person may accept for transportation or transport by motor vehicle any shipment of hazardous material that is not in accordance with the requirements of this subchapter.

**§ 177.802 Inspection.**

Records, equipment, packagings and containers under the control of a motor carrier, insofar as they affect safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department.

77. Section 177.814 is revised to read as follows:

**§ 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.**

Each owner of a cargo tank motor vehicle and each motor carrier must comply with the reporting and record retention requirements contained in § 180.417 of this subchapter.

**§ 177.822 [Amended]**

78. In § 177.822, paragraph (b) is amended by removing the reference "178.315" and inserting in its place "178.351".

79. Section 177.824 is revised to read as follows:

**§ 177.824 Retesting and inspection of cargo tanks.**

Except as otherwise provided in this subchapter, no motor carrier may operate a cargo tank motor vehicle containing a hazardous material unless the cargo tank motor vehicle conforms to the retest and inspection requirements set forth in Subpart E of Part 180 of this subchapter. This paragraph does not apply to any cargo tank filled prior to the retest or inspection due date.

80. In § 177.840, the section heading and paragraph (f) are revised to read as follows:

**§ 177.840 Compressed gases.**

(f) A cargo tank motor vehicle used for transportation of chlorine may not be moved, coupled or uncoupled, when any loading or unloading connections are attached to the vehicle, nor may it be left without the power unit attached unless the vehicle is chocked or equivalent means are provided to prevent motion. For additional requirements, see § 173.315(o) of this subchapter.

**§ 177.835 [Amended]**

81. In § 177.835, paragraph (k), the first sentence is amended by removing the reference to "178.315" and inserting in its place "178.351", and the last sentence is amended by removing the reference "178.318" and inserting in its place "178.352".

**PART 178—SHIPPING CONTAINER SPECIFICATIONS**

82. The authority citation for Part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808, 49 Part 1.

83-84. A new § 178.320 is added to subpart J to read as follows:

**§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.**

(a) *Definitions.* (1) For the purposes of this subpart, "design type" means one or more cargo tanks which are made—

- (i) To the same specification;
- (ii) By the same manufacturer;
- (iii) To the same engineering drawings, and calculations;
- (iv) Of the same materials of construction;

- (v) To the same diameter;
- (vi) To a length varying by no more than five percent;

- (vii) With the volume varying by no more than five percent (due to a change in length only); and

- (viii) For the purposes of § 178.338 only, with the same insulation system.

(2) "Manufacturer" means any person engaged in the manufacture or assembly of a DOT specification cargo tank or cargo tank equipment. A manufacturer shall register with the Department in accordance with subpart F of Part 107 in subchapter B of this chapter.

(b) *Design certification.* (1) Each cargo tank design type shall be certified in conformance with the specification requirements by a design certifying engineer registered in accordance with Subpart F of Part 107.

(2) The design certifying engineer shall furnish to the manufacturer a certificate, including sketches, drawings, and calculations, to indicate compliance

with the specification requirements. Each certificate shall be signed by the design certifying engineer.

(3) The manufacturer shall retain the design certificate at his principal place of business for as long as he manufactures DOT specification cargo tanks.

85. In § 178.337, the heading is revised to read as follows:

**§ 178.337 Specification MC 331; cargo tank motor vehicle primarily for transportation of compressed gases as defined in Subpart G of Part 173 of this subchapter.**

86. In § 178.337-1, paragraph (e) is revised to read as follows:

**§ 178.337-1 General requirements.**

(e) *Insulation.* (1) Each tank required to be insulated must conform with the use and performance requirements contained in §§ 173.315(a) Table, Note 11 and 178.337-1 (a)(3) and (e)(2) of this subchapter.

(2) Each tank intended for chlorine; carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service must have suitable insulation of such thickness that the overall thermal conductance is not more than 0.08 Btu per square foot per °F differential per hour. The conductance must be determined at 60 °F. Insulation material used on tanks for nitrous oxide, refrigerated liquid must be noncombustible. Insulating material used on tanks for chlorine must be corkboard or self-extinguishing polyurethane foam, with a minimum thickness of 4 inches.

87. In § 178.337-2, paragraph (c) is revised to read as follows:

**§ 178.337-2 Material.**

(c) A cargo tank in anhydrous ammonia service must be constructed of steel. The use of copper, silver, zinc or their alloys is prohibited. Baffles made from aluminum may be used only if joined to the tank by a process not requiring post weld heat treatment of the tank.

88. Section 178.337-3 is revised to read as follows:

**§ 178.337-3 Structural integrity.**

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile strength of the metal at any point in the cargo tank. The



calculated design stresses must take into account the weight of the tank, the maximum weight of lading, and the weight of structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(b) Steel less than  $\frac{3}{16}$  inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank unless the tank is evacuated or has a load bearing jacket. Steel at least 0.110 inch thick may be used for the shell or heads for a tank that is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(c) Analyses of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not necessarily uniform throughout the cargo tank. Stress calculations must be made by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_z^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

$S$  = Effective stress as limited by this requirement, in psi.

$S_y$  = The circumferential tensile stress due to internal pressure, in psi.

$S_x$  = The following tensile or/and compressive stresses, in psi, that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(6) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the fully loaded vehicle.

$S_z$  = The following shear stresses, in psi, that apply.

(1) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface; and

(3) The torsional shear stress due to a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface.

(d) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the design stress value used may not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraphs (a), (b), (c) or (d) of this section must be used.

(e) A corrosion allowance of at least 20 percent of the minimum shell and head thickness or 0.100 inch, whichever is less, must be added to the thickness requirement for a cargo tank used in chlorine or sulfur dioxide service. The head and shell thickness for chlorine tanks must be at least  $\frac{5}{16}$  inch, including corrosion allowance.

(f) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed must meet the requirements in paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The lightweight attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under paragraph UHT of the ASME Code.

(2) Except as prescribed in §§ 178.337-3(f)(1) and 173.337-13(d), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 0.250 inch thick may be used when the shell or head thickness is over 0.250 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must—

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad, except for a small gap at the lowest point for draining, using filler material conforming to the recommendations of the manufacturer of the head or shell material.

(3) Where any tank support is attached to any part of a tank head, the stresses imposed upon the head must be as required in paragraph (a) of this section and § 178.337-13 with respect to maximum concentrated stresses at pads and cradles.

89. In § 178.337-4, the first sentence in paragraph (b) is revised to read as follows:

§ 178.337-4 Joints.

\* \* \* \* \*



(b) Welding procedure and welder performance must be in accordance with Section IX of the ASME Code. \* \* \*

90. In § 178.337-6, paragraph (a) is revised to read as follows:

**§ 178.337-6 Closure for manhole.**

(a) Each cargo tank manufactured after December 12, 1989, must be provided with a manhole conforming to paragraph UG-46(g)(1) and other applicable requirements of the ASME Code, except that a cargo tank constructed of NQT steel having a capacity of 3500 water gallons or less may be provided with an inspection opening conforming to paragraph UG-46 and other applicable requirements of the ASME Code instead of a manhole.

91. In § 178.337-8, paragraphs (a)(2) and (b) are revised to read as follows:

**§ 178.337-8 Outlets.**

(a) \* \* \*

(2) With the exception of gauging devices, thermometer wells, and pressure relief valves, each opening in a cargo tank intended for use in transporting compressed gas (except carbon dioxide, refrigerated liquid) must be—

(i) Closed with a plug, cap or bolted flange;

(ii) Protected with an excess flow valve on product discharge openings or protected with a check valve on product inlet openings; or

(iii) Fitted with an internal self-closing stop valve as specified in § 178.337-11(a).

(b) Outlets on chlorine cargo tanks must meet the requirements in § 178.337-1(c)(2).

92. In § 178.337-9, the section heading, the paragraph (a) heading, and paragraphs (b) and (d)(1) are revised to read as follows:

**§ 178.337-9 Pressure relief devices, piping, valves, hoses, and fittings.**

(a) *Pressure relief devices.* \* \* \*

(b) *Piping, valves, hose, and fittings.*

(1) The burst pressure of all piping, pipe fittings, hose and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank.

Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service. For chlorine service, see paragraph (b)(7) of this section.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier.

Malleable metals must be used in the construction of valves and fittings.

Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 1000° F. The method of joining tubing must not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each hose coupling must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) *Piping and fittings* must be grouped in the smallest practicable space and protected from damage as required by § 178.337-10.

(6) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(7) *Chlorine cargo tanks.* Cargo tanks used to transport chlorine must conform to the following:

(i) No hose, piping or tubing used for loading or unloading may be mounted or carried on the cargo tank motor vehicle.

(ii) Angle valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(A) For a cargo tank manufactured before January 1, 1975, to either Drawing 104-4, dated May 5, 1958, or Drawing 104-5, dated September 1, 1972.

(B) For a cargo tank manufactured on or after January 1, 1975, to Drawing 104-5, dated September 1, 1972.

(iii) Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

(d) *Refrigeration and heating coils.* (1) Refrigeration and heating coils must be securely anchored with provisions for thermal expansion. The coils must be pressure tested externally to at least tank test pressure, and internally to either the tank test pressure or twice the working pressure of the heating/refrigeration system, whichever is higher. A tank may not be placed in service if any leakage occurs or other

evidence of damage is found. The refrigerant or heating medium to be circulated through the coils must not be capable of causing any adverse chemical reaction with the tank lading in the event of leakage. The unit furnishing refrigeration may be mounted on the motor vehicle.

93. Section 178.337-11 is revised to read as follows:

**§ 178.337-11 Emergency discharge control.**

(a) *Excess flow valves, back flow check valves and stop valves.* (1) When required by § 178.337-8(a)(2):

(i) Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated.

(ii) Each self-closing stop valve, excess flow valve, or check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank. The valve seat must be located inside the tank or within a welded flange, its companion flange, a nozzle or coupling. The installation must be made so as to assure that any undue strain which causes a failure requiring the functioning of the valve will not impair the operation of the valve.

(iii) All parts of the valve inside the tank, or within a nozzle, flange, companion flange, or coupling must be made of material not subject to corrosion or other deterioration in the presence of the lading.

(iv) Any liquid level gauging device must be constructed so that the outward flow of the tank lading does not exceed the flow through a 0.060-inch diameter opening.

(v) Each excess flow valve must close automatically at the rated flow of gas or liquid as specified by the valve manufacturer. The flow rating of the piping, fittings, valves, and hose on each side of the excess flow valve must be at least equal to that of the excess flow valve. If branching or other restrictions are incorporated in the system so that the flow rating is reduced to less than that of the excess flow valve at the tank, additional excess flow valves must be located where the flow rates are reduced. The additional valves must have sufficient flow rating so that total capacity equals or exceeds the excess flow valve capacity.

(vi) An excess flow valve may be designed with a bypass, not to exceed a 0.040-inch diameter opening, to allow equalization of pressures.

(2) Each liquid or vapor discharge opening in a cargo tank intended for the



transportation of a flammable liquid, a flammable compressed gas, hydrogen chloride (refrigerated liquid), or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop-valve. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

(i) On a tank over 3,500 gallons water capacity, each internal self-closing stop-valve must be provided with remote means of automatic closure, both mechanical and thermal, that are installed at the ends of the tank in at least two, diagonally opposite locations. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. If the loading/unloading connection at the tank is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system. Fusible elements must not have a melting point exceeding 250° F. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping.

(ii) On a tank of 3,500 gallons water capacity or less, each internal self-closing stop-valve must be provided with at least one remote means of automatic closure, which may be mechanical, installed on the end of the tank furthest away from the loading/unloading connection area. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping.

(3) Unless otherwise specified in paragraph (c) of this section, each outlet of a cargo tank intended for the transportation of a nonflammable gas (except carbon dioxide, refrigerated liquid) must be provided with an internal self-closing stop-valve or an automatic excess flow valve.

(4) Excess flow valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(i) For a cargo tank manufactured before January 1, 1975:

(A) A valve conforming to either Drawing 101-4, dated May 16, 1969, or Drawing 101-6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to either Drawing 106-3, dated May 16, 1973, or Drawing 106-5, dated September 1, 1973, must be installed under each gas angle valve.

(ii) For a cargo tank manufactured on or after January 1, 1975:

(A) A valve conforming to Drawing 101-6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to Drawing 106-5, dated September 1, 1973, must be installed under each gas angle valve.

(b) *Shut-off valves.* Each filling and discharge line must be provided with a manual stop-valve located as close to the tank as practicable. However, if an internal self-closing stop-valve is used, the manual stop valve must be located in the line between the self-closing stop-valve and the hose connection. A single so-called "stop-check" or excess flow valve may not be used to satisfy the requirements of this paragraph, except as provided in paragraph (c) of this section.

(c) The requirements in paragraph (a) of this section do not apply to:

(1) A vapor or liquid discharge opening of less than 1 1/4 inch NPT equipped with an excess flow valve together with a manually operated external self closing stop valve, in place of a remotely controlled internal self-closing stop-valve.

(2) A vapor or liquid discharge opening of 1 1/4 inch NPT equipped with an excess flow valve together with a manually operated external stop valve installed before October 1, 1984.

(3) An engine fuel line, on a truck-mounted tank, of not over 3/4 inch NPT equipped with a valve having an integral excess flow valve.

94. In § 178.337-14, paragraph (b) is revised to read as follows:

#### § 178.337-14 Gauging devices.

(b) *Pressure gauges.* (1) See § 173.315(h) of this subchapter.

(2) Each cargo tank used in carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service must be provided with a suitable pressure gauge. A shut-off valve must be installed between the pressure gauge and the tank.

\* \* \* \* \*

95. Section 178.337.15 is revised to read as follows:

#### § 178.337-15 Pumps and compressors.

(a) Liquid pumps or gas compressors, if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

(b) A liquid chlorine pump may not be installed on a cargo tank intended for the transportation of chlorine.

96. In § 178.338-18, the first and second sentences of paragraph (a) are revised to read as follows:

#### § 178.337-18 Certification.

(a) The tank vehicle manufacturer must supply and the owner must obtain, a tank manufacturer's data report as required by the ASME Code, and a certificate stating that the completed cargo tank motor vehicle conforms in all respects to Specification MC 331 and the ASME Code. The certificate must be signed by a responsible official of the manufacturer and a Registered Inspector. The manufacturer's and the Registered Inspector's registration number must appear on the certificate (See subpart F, Part 107 in subchapter B of this chapter.) \* \* \*

\* \* \* \* \*

97. Section 178.338-3 is revised to read and follows:

#### § 178.338-3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile strength of the metal at any point in the cargo tank. The calculated design stresses must take into account the weight of the tank, the maximum weight of lading, and the weight of structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.



(b) Steel less than 3/16 inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank unless the tank is evacuated or has a load bearing jacket. Steel at least 0.110 inch thick may be used for the shell or heads for a tank that is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(c) Analyses of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not necessarily uniform throughout the cargo tank. Stress calculations must be made by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_z^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

$S$  = Effective stress as limited by this requirement, in psi.

$S_y$  = The circumferential tensile stress due to internal pressure, in psi.

$S_x$  = The following tensile and/or compressive stresses, in psi, that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c);

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c);

(6) The tensile or compression stress due to a bending moment produced by a vertical force using applicable static loadings specified in § 178.338-13 (b) and (c).

$S_z$  = The following shear stresses (in psi) that apply.

(1) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle; and

(3) The torsional shear stress due to a lateral accelerative force applied at the road surface which will produce an overturn but

not less than 0.75 times the static weight of the fully loaded vehicle.

(d) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the design stress value used must not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraph (a), (b), (c), or (d) of this section must be used.

(e) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed must conform to the requirements of paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The lightweight attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion. Attachments conforming with this paragraph are not authorized for cargo tanks constructed under paragraph UHT of the ASME Code.

(2) Except as prescribed in §§ 178.338.3(f)(1) and 173.318(a), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head thickness is over 3/16 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its

lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Be attached by a continuous weld around the pad except for a small gap at the lowest point for draining.

98. In § 178.338-8, paragraph (b) is revised to read as follows:

**§ 178.338-8 Pressure relief devices, piping, valves, and fittings.**

\* \* \*

(b) \* \* \*

(1) The burst pressure of all piping, pipe fittings, hoses and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing materials may not be lower than 1000 °F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each hose coupling must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) All piping, valves and fittings on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(6) Each valve must be suitable for the tank design pressure at the tank design service temperature.

(7) All fittings must be rated for the maximum tank pressure and suitable for the coldest temperature to which they will be subjected in actual service.



(8) All piping, valves, and fittings must be grouped in the smallest practicable space and protected from damage as required by § 178.338-10.

(9) When a pressure-building coil is used on a tank designed to handle oxygen or flammable ladings, the vapor connection to that coil must be provided with a valve or check valve as close to the tank shell as practicable to prevent the loss of vapor from the tank in case of damage to the coil. The liquid connection to that coil must also be provided with a valve.

99. Section 178.338-17 is revised to read as follows:

**§ 178.338-17 Pumps and compressors.**

(a) *Liquid pumps and gas compressors*, if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction to the tank.

(b) A valve or fitting made of aluminum with internal rubbing or abrading aluminum parts that may come in contact with oxygen in the cryogenic liquid form must not be installed on any cargo tank used to transport oxygen, cryogenic liquid.

100. Sections 178.340, 178.341, 178.342 and 178.343 are removed, and §§ 178.345 through 178.345-15, 178.346 through 178.346-15, 178.347 through 178.347-15 and 178.348 through 178.348-15 are added to subpart J to read as follows:

**§ 178.345 General design and construction requirements applicable to Specification DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348) cargo tank motor vehicles.**

**§ 178.345-1 General requirements.**

(a) Specification DOT 406, DOT 407 and DOT 412 cargo tank motor vehicles must conform to the requirements of this section in addition to the requirements of the applicable specification contained in §§ 178.346, 178.347 or 178.348.

(b) All specification requirements are minimum requirements.

(c) *Definitions*. The following terms apply to §§ 178.345, 178.346, 178.347 and 178.348.

*"Appurtenance"* means any cargo tank accessory attachment that has no lading retention or containment function and provides no structural support to the cargo tank.

*"Baffle"* means a non-liquid-tight transverse partition device that deflects,

checks or regulates fluid motion in a tank.

*"Bulkhead"* means a liquid-tight transverse closure at the ends of or between cargo tanks.

*"Charging line"* means a hose, tube, pipe, or similar device used to pressurize a tank with material other than the lading.

*"Companion flange"* means one of two mating flanges where the flange faces are in contact or separated only by a thin leak sealing gasket and are secured to one another by bolts or clamps.

*"Connecting structure"* means the structure joining two cargo tanks.

*"Constructed and certified in conformance with the ASME Code"* means the cargo tank is constructed and stamped in accordance with the ASME Code, and is inspected and certified by an Authorized Inspector.

*"Constructed in accordance with the ASME Code"* means the cargo tank is constructed in accordance with the ASME Code with the authorized exceptions (see §§ 178.346, 178.347, and 178.348) and is inspected and certified by a Registered Inspector.

*"External self-closing stop-valve"* means a self-closing stop-valve designed so that the self-stored energy source is located outside the tank and the welded flange.

*"Flange"* means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment. For size and shape, see ANSI B16.5.

*"Inspection pressure"* means the pressure used to determine leak tightness of the tank when testing with pneumatic pressure.

*"Internal self-closing stop-valve"* means a self-closing stop-valve designed so that the self-stored energy source is located inside the tank or tank sump, or within the welded flange, and the valve seat is located within one inch of the external face of the welded flange or sump of the tank.

*"Lading"* means the hazardous material contained in a cargo tank.

*"Loading/unloading connection"* means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose or device is attached.

*"Loading/unloading outlet"* means the tank outlet used for normal loading/unloading operations.

*"Loading/unloading stop-valve"* means the stop valve farthest from the tank loading/unloading outlet to which the loading/unloading connection is attached.

*"Maximum allowable working pressure"* or *"MAWP"* See § 178.345-1(k).

*"Multi-specification cargo tank motor vehicle"* means a cargo tank motor vehicle equipped with two or more cargo tanks fabricated to more than one cargo tank specification.

*"Nozzle"* means the subassembly consisting of a pipe section with a welded or forged flange on one end in which the flange is an integral part of the neck extension.

*"Outlet"* means any opening in the shell or head of a tank, (including the means for attaching a closure), except that the following are not outlets: A threaded opening securely closed during transportation with a threaded plug, a flanged opening securely closed during transportation with a bolted or welded blank flange, a manhole, or gauging devices, thermometer wells, and safety relief devices.

*"Outlet stop-valve"* means the stop-valve at the tank loading/unloading outlet.

*"Pipe coupling"* means a fitting with internal or external threads on both ends.

*"Rear bumper"* means the structure designed to prevent a vehicle or object from under-riding the rear of a motor vehicle. See § 393.86 of this title.

*"Rear-end tank protection device"* means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

*"Sacrificial Device"* means an element, such as a shear section, designed to fail under load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the tank and the sacrificial device. Operation of the sacrificial device must leave the remaining piping and its attachment to the tank intact and capable of retaining lading.

*"Self-closing stop-valve"* means a stop-valve held in the closed position by means of self-stored energy, which opens only by application of an external force and which closes when the external force is removed.

*"Shear section"* means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

*"Shell"* means the circumferential portion of a tank defined by the basic design radius excluding the closing heads.



"Stop-valve" means a valve that stops the flow of lading.

"Sump" means a protrusion from the bottom of a tank shell designed to facilitate complete loading and unloading of lading.

"Tank" means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

"Test pressure" means the pressure to which a tank is subjected to determine pressure integrity.

"Toughness of material" means the capability of a material to absorb the energy represented by the area under the stress strain curve (indicating the energy absorbed per unit volume of the material) up to the point of rupture.

"Vacuum tank" means a tank that is loaded by reducing the pressure in the tank to below atmospheric pressure.

"Variable specification cargo tank" means a cargo tank that is constructed in accordance with one specification, but which may be altered to meet another specification by changing relief device, closures, lading discharge devices, and other lading retention devices.

"Void" means the space between tank heads or bulkheads and a connecting structure.

"Welded flange" means a flange attached to the tank by a weld joining the tank shell to the cylindrical outer surface of the flange, or by a fillet weld joining the tank shell to a flange shaped to fit the shell contour.

(d) A manufacturer of a cargo tank must hold a current ASME certificate of authorization and must be registered with the Department in accordance with Part 107, Subpart F of this chapter.

(e) All construction must be certified by an Authorized Inspector or by a Registered Inspector as applicable to the cargo tank.

(f) Each cargo tank must be designed and constructed in conformance with the requirements of the applicable cargo tank specification. Each DOT 412 cargo tank with a maximum allowable working pressure greater than 15 psig, and each DOT 407 cargo tank with a maximum allowable working pressure greater than 35 psig must be "constructed and certified in conformance with the ASME Code" except as limited or modified by the applicable cargo tank specification. Other cargo tanks must be "constructed in accordance with the ASME Code", except as limited or modified by the applicable cargo tank specification.

(g) Requirements relating to parts and accessories on motor vehicles, which are contained in Part 393 of the Federal Motor Carrier Safety Regulations of this title, are incorporated into these specifications.

(h) Any additional requirements prescribed in Part 173, 177, or 180 of this subchapter that pertain to the transportation of specific lading are incorporated into these specifications.

(i) *Cargo tank motor vehicle composed of multiple cargo tanks.*

(1) A cargo tank motor vehicle composed of more than one cargo tank may be constructed with the cargo tanks made to the same specification or to different specifications. Each cargo tank must conform in all respects with the specification for which it is certified.

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345-3. Any void within the connecting structure must be vented to the atmosphere by a drain of at least 1 inch inside diameter which shall be kept open at all times. The connecting structure must have inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure and cargo tank surfaces. Each drainage and inspection opening must be accessible.

(j) *Variable specification cargo tank.* A cargo tank that may be physically altered to conform to another cargo tank specification must have the required physical alterations to convert from one specification to another clearly indicated on the variable specification plate.

(k) *Maximum Allowable Working Pressure (MAWP).* The MAWP for each cargo tank must be greater than or equal to the largest of the following (The MAWP derived is the pressure to be used as prescribed in the ASME Code in the design of the tank):

(1) The pressure prescribed for the lading in Part 173;

(2) Vapor pressure of the most volatile lading, at 115 °F (expressed in psig), plus the maximum static pressure exerted by the lading at the maximum lading density, plus any pressure exerted by a gas padding (including air in the ullage space or dome), if used; or

(3) The maximum pressure in the tank during loading or unloading.

#### § 178.345-2 Material and material thickness.

(a) All material for shell, heads, bulkheads, and baffles must be metal compatible with the lading intended to be transported therein and must

conform to Section II, Parts A and B, of the ASME Code except as follows:

(1) ASTM A 676 or ASTM A 715 steels are also authorized for cargo tanks "constructed in accordance with the ASME Code".

(2) Aluminum alloys suitable for fusion welding and conforming with the 0, H32 or H34 tempers of one of the following ASTM specifications may be used for cargo tanks "constructed in accordance with the ASME Code":

ASTM B-209 Alloy 5052

ASTM B-209 Alloy 5086

ASTM B-209 Alloy 5154

ASTM B-209 Alloy 5254

ASTM B-209 Alloy 5454

ASTM B-209 Alloy 5654

All heads, bulkheads and baffles must be of 0 temper (annealed) or stronger tempers. All shell materials shall be of H 32 or H 34 tempers except that the lower ultimate strength tempers may be used if the minimum shell thicknesses in the tables are increased in inverse proportion to the lesser ultimate strength.

(b) *Minimum thickness.* The minimum thickness for the shell and heads must be such that the maximum stress levels specified in § 178.345-3(a), (b), (c), or (d) of this subpart are not exceeded. In no case may the shell or head thickness be less than that specified in the applicable specification.

(c) *Corrosion or abrasion protection.* A cargo tank or a part thereof, subject to thinning by corrosion or mechanical abrasion due to the lading, must be protected by providing the tank or part of the tank with a suitable increase in thickness of material, a lining or some other suitable method of protection.

(1) *Corrosion allowance.* Material added for corrosion allowance need not be of uniform thickness if different rates of attack can reasonably be expected for various areas of the tank.

(2) *Lining.* Lining material must consist of a nonporous, homogeneous material not less elastic than the parent metal and substantially immune to attack by the lading. The lining material must be bonded or attached by other appropriate means to the tank wall and must be impermeable when applied. Any joint or seam in the lining must be made by fusing the materials together, or by other satisfactory means.

#### § 178.345-3 Structural integrity.

(a) The maximum calculated design stress value (the effective stress on the tank shell in any plane normal to the longitudinal axis) may not exceed the maximum design stress value prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile



strength of the metal at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading and the weight of structures supported by the tank but not including the weight of the structures supporting the tank in normal conditions. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. Thermal coefficients of dissimilar materials must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(b) Analysis of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not uniform through the length of the tank. Calculation of the basic structural integrity must be made by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_z^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

$S_y$  = The circumferential tensile stress due to internal pressure, in psi.

$S_x$  = The following tensile or/and compressive stresses (in psi) that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force equal to 0.75 times the static weight of the fully loaded vehicle

applied to the horizontal pivot of the upper coupler (fifth wheel) supporting the vehicle;

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied to the horizontal pivot of the upper coupler (fifth wheel) supporting the vehicle;

(6) The tensile or compression stress due to a bending moment produced by a vertical force equal to 1.7 times the static weight of the tank and contents.

$S_z$  = The following shear stresses (in psi) that apply.

(1) The vertical shear stress due to a vertical force equal to 1.7 times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force equal to 0.4 times the static weight of the tank and contents applied at the road surface; and

(3) The torsional shear stress due to a lateral accelerative force equal to 0.4 times the static weight of the tank and contents applied at the road surface.

(c) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the MAWP in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading, the design stress value used must not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraph (a), (b), or (c) of this section must be used.

(d) If a tank is supported by a vehicle frame or other form of structural support, a tank shell or head thickness less than that specified in paragraph (c) of this section may be used provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated and considered.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank.

(1) Structural members, the suspension subframe, accident protection devices and external rings should be used as sites for attachment of appurtenances and other accessories to the cargo tank when practicable.

(2) A lightweight attachment, such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The lightweight attachment

may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(3) Except as prescribed in paragraphs (e)(1) and (e)(2) of this section, the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank, if any force less than that prescribed in § 178.345-8(b)(1) is applied. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached and not more than 1.5 times the shell or head thickness. However, a pad not less than  $\frac{3}{16}$  inch thick may be used when the shell or head is over  $\frac{3}{16}$  inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) be attached by a continuous weld around the pad except for a small gap at the lowest point for draining.

#### § 178.345-4 Joints.

(a) All joints between tank shell, heads, baffles, baffle attaching rings, and bulkheads must be welded in conformance with the ASME Code welding procedures.

(b) Where practical all welds must be easily accessible for inspection.

#### § 178.345-5 Manhole assemblies.

(a) Each cargo tank with capacity greater than 400 gallons must be accessible through a manhole at least 15 inches in diameter.

(b) Each manhole, fill opening and washout assembly must be structurally capable of withstanding, without leakage or permanent deformation that would affect its structural integrity, a static internal fluid pressure of at least 36 psig, or cargo tank test pressure, whichever is greater. The manhole assembly manufacturer shall verify compliance with this requirement by hydrostatically testing at least one percent (or one manhole closure, whichever is greater) of all manhole



closures of each type produced each 3 months, as follows:

(1) The manhole, fill opening, or washout assembly must be tested with the venting devices blocked. Any leakage or deformation that would affect the product retention capability of the assembly shall constitute a failure.

(2) If the manhole, fill opening, or washout assembly tested fails, then five more covers from the same lot must be tested. If one of these five covers fails, then all covers in the lot from which the tested covers were selected are to be 100% tested or rejected for service.

(c) Each manhole, filler and washout cover must be fitted with a safety device that prevents the cover from opening fully when internal pressure is present.

(d) Each manhole and fill cover must be secured with fastenings that will prevent opening of the covers as a result of vibration under normal transportation conditions or shock impact due to a rollover accident on the roadway or shoulder where the fill cover is not struck by a substantial obstacle.

(e) Each manhole cover must be permanently marked by stamping or other means with:

(1) Manufacturer's name;

(2) Test pressure \_\_\_\_\_ psig;

(3) A statement certifying that the manhole cover meets the requirements in § 178.345-5.

#### § 178.345-6 Supports and anchoring.

(a) A cargo tank with a frame not integral to the tank must have the tank secured by restraining devices to eliminate any motion between the tank and frame that may abrade the tank shell due to the stopping, starting, or turning of the vehicle. The design calculations of the support elements must include the stresses indicated in § 178.345-3(b). Such restraining devices must be readily accessible for inspection and maintenance, except that insulation and jacketing are permitted to cover the restraining devices.

(b) A cargo tank designed and constructed so that it constitutes, in whole or in part, the structural member used in lieu of a frame must be supported in such a manner that the resulting stress levels in the tank do not exceed those specified in § 178.345-3(a). The design calculations of the support elements must include the stresses indicated in § 178.345-3(b).

#### § 178.345-7 Circumferential reinforcements.

(a) A tank with a shell thickness of less than  $\frac{3}{8}$  inch must be circumferentially reinforced with bulkheads, baffles, ring stiffeners, or any

combination thereof, in addition to the tank heads.

(1) Circumferential reinforcement must be located so that the thickness and tensile strength of the shell material in combination with the frame and reinforcement produces structural integrity at least equal to that prescribed in § 178.345-3 (a) and (b) and in such a manner that the maximum unreinforced portion of the shell does not exceed 60 inches. Circumferential reinforcement spacing of cargo tanks designed to be loaded by vacuum may exceed 60 inches provided the maximum unreinforced portion of the shell conforms with the requirements of Section VIII, Division 1 of the ASME Code.

(2) Circumferential reinforcement must be located within one inch of points where discontinuity in the longitudinal shell sheet alignment exceeds 10 degrees unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.345-3(a).

(b) Except for doubler plates and knuckle pads, no reinforcement may cover any circumferential joint.

(c) A baffle or baffle attachment ring, if used as a required reinforcement member, must produce structural integrity at least equal to that prescribed in § 178.345-3 and must be circumferentially welded to the tank shell. The welded portion must not be less than 50 percent of the total circumference of the tank and the length of any unwelded space on the joint shall not exceed 40 times the shell thickness.

(d) *Stiffening rings.* (1) Stiffening rings, when used to conform with this section, must be continuous around the circumference of the tank shell and must have a section modulus about the neutral axis of the ring section parallel to the shell at least equal to that determined as follows:

$I/C$  (min) = 0.00027 WL for MS, HSLA and stainless steels

$I/C$  (min) = 0.000467 WL for aluminum alloys

Where:

$I/C$  = Section modulus in inches

$W$  = Tank width or diameter in inches

$L$  = Ring spacing in inches; i.e., the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the tank shell, a portion of the shell may be considered as part of the ring section for purposes of computing the ring section modulus. This portion of the shell may be used provided at least 50 percent of the total circumference of the tank is welded and the length of any unwelded space on the joint does not exceed 40

times the shell thickness. The maximum portion of the shell to be used in these calculations is as follows:

Circumferential ring stiffener to tank shell welds	Distance between parallel circumferential ring stiffener to shell welds	Shell section
1		20t
2	Less than 20t	20t + W
3	20t or more	40t

where:

t = Shell thickness.

W = Distance between parallel circumferential ring stiffener to shell welds.

(3) Stiffening rings, when used to conform with the vacuum requirements of this section, must be as prescribed in the ASME Code.

(4) If configuration of internal or external ring stiffener encloses an air space, this air space shall be arranged for venting and be equipped with drainage facilities which shall be kept operative at all times.

(5) Stiffening rings must be of the type that can be visually inspected. Hat shaped or open channel rings which preclude visual inspection of the tank shell are prohibited on cargo tanks constructed of carbon steel.

#### § 178.345-8 Accident damage protection.

(a) *General.* Each cargo tank and its associated piping, closures and valves must be designed and constructed to minimize the potential for the loss of lading due to an accident. The cargo tank design and construction should take into consideration the potential for puncture, abrasion, crush, dynamic pressure, and impact and inertial loadings.

(1) Any dome, sump, or washout cover plate projecting from the cargo tank wall that retains lading in any tank orientation, must be as strong and tough as the tank wall and have a thickness at least equal to that specified by the appropriate cargo tank specification. Any such projection located in the lower one-third of the tank circumference (or cross section perimeter for non-circular tanks) that extends more than half its diameter at the point of attachment to the tank or more than 4 inches from the tank wall, or located in the upper  $\frac{2}{3}$  of the tank circumference for circular tanks (or the upper  $\frac{2}{3}$  of the cargo tank cross section perimeter for non-circular tanks) that extends more than one-fourth its diameter or 2 inches from the point of attachment to the tank must have accident damage protection devices that are:



(i) As specified in this section;  
 (ii) 125 percent as strong as the otherwise required accident damage protection device; or

(iii) Attached to the cargo tank in accordance with the requirements of paragraph (a)(3) of this section.

(2) Outlets, valves, closures, piping, or any devices that if damaged in an accident could result in a loss of lading from the cargo tank must be protected by accident damage protection devices as specified in this section.

(3) Accident damage protection devices attached to the wall of a cargo tank must be designed, constructed, and installed so as to maximize the distribution of loads to the tank wall and minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Each accident damage protection device may be designed to prevent loss of the lading retention capability of the cargo tank by failure of the device from loads in excess of those required in this section. In this case, accident induced stresses resulting from the appropriate accident damage protection device requirements in combination with the stresses from the tank operating at the MAWP may not result in a tank wall stress greater than 75 percent of the ultimate strength of the tank material.

(4) Any piping that extends beyond an accident damage protection device must be equipped with a stop-valve and a sacrificial device such as a shear section. The sacrificial device must be located in the piping system outboard of the stop-valve and within the accident damage protection device to prevent any accidental loss of lading. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or tank wall. The failure of the sacrificial device must leave the protected lading retention device and its attachment to the tank wall intact and capable of retaining product.

(5) *Minimum road clearance.* The minimum allowable road clearance of any cargo tank component or protection device located between any two adjacent axles on a vehicle or vehicle combination shall be at least one-half inch for each foot separating such axles, and in no case less than 12 inches.

(b) *Bottom damage protection.* Each outlet, projection or piping located in the lower  $\frac{1}{3}$  of the tank circumference (or cross section perimeter for non-circular tanks) that could be damaged in an accident thereby resulting in the loss of lading must be protected by a bottom damage protection device, except as provided by § 178.345.8(a)(1).

(1) Any bottom damage protection device must be able to withstand or deflect away from the cargo tank a force of 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over each surface of the device, over an area not to exceed 6 square feet, and a width not to exceed 6 feet. The device must extend an adequate distance, such that the piping or other component being protected will not be damaged, and in no case less than 6 inches beyond any component that may contain lading.

(2) A lading discharge opening equipped with an internal self-closing stop-valve need not conform to paragraph (b)(1) of this section provided it is protected so as to reasonably assure against the accidental loss of lading. This protection must be provided by a sacrificial device located outboard of each internal self-closing stop-valve and within 4 inches of the major radius of the tank shell or within 4 inches of a sump, but in no case more than 8 inches from the major radius of the tank shell. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or tank wall. The failure of the sacrificial device must leave the protected lading retention device or part and its attachment to the tank wall intact and capable of retaining product.

(c) *Rollover Damage Protection.* Each closure for openings, including but not limited to manhole, filling or inspection openings, and each valve, fitting, pressure relief device, vapor recovery system or other accessory located in the upper  $\frac{2}{3}$  of a cargo tank circumference for circular tanks (or the upper  $\frac{2}{3}$  of a cargo tank cross section perimeter for non-circular tanks) must be protected by being enclosed inside the body of the tank, by being enclosed inside a rollover damage protection device, or by being 125 percent as strong as the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand a load normal (perpendicular to the tank surface) and tangential from any direction (perpendicular to the normal load) to the tank shell equal to at least twice the weight of the loaded cargo tank motor vehicle, based on the ultimate strength of the material used. These design loads may be considered independently. If more than one rollover protection device is used, each device must be capable of carrying its proportionate share of the required loads and in each case at least one-fourth the required total tangential load. The design must be proven capable of

carrying the required loads by calculations, tests or a combination of tests and calculations. Deformation of the protection device is acceptable provided the devices being protected are not damaged.

(2) A rollover damage protection device that would otherwise allow the accumulation of liquid on the top of the tank, must be provided with a drain that directs the liquid to a safe point of discharge away from any structural component of the cargo tank motor vehicle.

(d) *Rear-end protection.* Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end tank protection device must conform to the following requirements (Nothing in this paragraph shall be construed to relieve a manufacturer of responsibility for complying with the requirements of § 393.86 of this title):

(1) The inboard surface of the rear-end tank protection device shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit, in order to prevent the device from applying force upon the cargo tank or tank components in the event of an accident.

(2) The dimensions of the rear-end tank protection device shall conform to the following:

(i) The bottom surface of the rear-end protection device must be at least 4 inches below the lower surface of any valve, fitting, or piping at the rear of the tank and not more than 60 inches from the ground with the vehicle empty.

(ii) The maximum width of a notch, indentation, or separation between sections of a rear-end tank protection device may not exceed 24 inches. A notched, indented, or separated rear-end protection device may be used only when the piping at the rear of the tank is equipped with a sacrificial device outboard of a shut-off valve.

(iii) The widest part of the motor vehicle at the rear may not extend more than 18 inches beyond the outermost ends of the device or (if separated) devices on either side of the vehicle.

(3) The structure of the rear-end tank protection device and its attachment to the vehicle must be designed to withstand, without leakage of lading, the impact of the cargo tank motor vehicle at rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the materials used. Such impact shall be considered



uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not to exceed 30 degrees to the longitudinal axis of the vehicle.

**§ 178.345-9 Pumps, piping, hoses and connections.**

(a) Each loading or unloading pump mounted on a cargo tank motor vehicle that may pressurize the cargo tank must be provided with an automatic means of closure to prevent internal pressure from exceeding the MAWP of the tank and tank-mounted equipment.

(b) Each hose, piping, stop-valve, lading retention fitting and closure for each cargo tank must be designed for a bursting pressure of at least 100 psig, and not less than four times the cargo tank MAWP. Each hose coupling must be designed for a bursting pressure of not less than 120 percent of the design bursting pressure of the hose and must be so designed that there will be no leakage when connected.

(c) Suitable provision must be made to allow for and prevent damage due to expansion, contraction, jarring, and vibration. Slip joints may not be used for this purpose.

(d) Any heating device, when installed, must be so constructed that the breaking of its external connections will not cause leakage of the tank lading.

(e) Any gauging, loading or charging device, including associated valves, must be provided with an adequate means of secure closure to prevent leakage.

(f) The attachment and construction of each loading/unloading or charging line must be of sufficient strength, or be protected by a sacrificial device, such that any load applied by loading/unloading or charging lines connected to the cargo tank cannot cause damage resulting in loss of lading from the cargo tank.

(g) Use of a nonmetallic pipe, valve or connection that is not as strong and heat resistant as the tank material is authorized only if such attachment is located outboard of the product retention system.

**§ 178.345-10 Pressure relief.**

(a) Each cargo tank must be equipped with a pressure relief system and when required with a vacuum relief system in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent tank rupture or collapse due to over-pressurization or vacuum resulting from

tank heating, cooling, loading or unloading.

**(b) Type and construction of relief systems and devices**

(1) Each cargo tank must be provided with a primary pressure relief system consisting of one or more reclosing pressure relief valves. A secondary pressure relief system consisting of another pressure relief valve in parallel with the primary pressure relief system may be used to augment the total venting capacity of the cargo tank. Non-reclosing pressure relief devices are not authorized in any cargo tank except when in series with a reclosing pressure relief device. Gravity actuated reclosing valves are not authorized on any cargo tank.

(2) If a frangible (rupture) disk is inserted in series with a reclosing pressure relief valve, the space between the frangible (rupture) disk and the valve must be provided with a suitable tell-tale indicator to permit detection of any frangible (rupture) disk pinholing or leakage which may cause a malfunction of the pressure relief system. The frangible (rupture) disk must rupture at a tank pressure within the range specified in paragraph (d)(1) of this section.

(3) Each pressure relief system must be designed to prevent loss of lading from the system in case of pressure surges, vehicle upset or accident, regardless of vehicle orientation. A pressure relief system designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading may be considered to be in compliance with this requirement. After June 6, 1994, each pressure relief system must be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation. Each pressure actuated relief system must function in the event of sustained pressure rise in excess of the prescribed set pressure. After June 12, 1991, each pressure actuated relief valve must be capable of reseating to a leak-tight condition, after a pressure surge and release of a lading volume of not more than one gallon. This requirement shall be considered to be met if the pressure relief valve successfully withstands the testing procedure outlined in TTMA RP No. 81—"Performance of Spring-Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," except that in addition:

(i) For this test, the drop height and cushioning must be calibrated to produce a measured pressure generated in the drop test vessel of not less than 50 psig for not less than 300 milliseconds

with the pressure actuated relief valve blocked closed;

(ii) The total pressure resulting from static head and pad pressure, exerted on the pressure actuated relief valve immediately before and after the drop test must be not less than the MAWP of the cargo tank; and

(iii) The total volume of liquid released during the test shall not exceed one gallon.

(4) Each reclosing pressure relief valve must be constructed and installed in such a manner that unauthorized adjustment of the relief setting can be detected and corrected.

(5) No shut-off valve or other device that could prevent venting through the pressure relief system may be installed in a pressure relief system.

(6) The pressure relief system must be mounted, shielded and drainable so as to minimize the accumulation of material that could impair the operation or discharge capability of the system by freezing, corrosion or blockage.

(c) *Location of relief devices.* Each pressure relief device must communicate with the vapor space of the tank in a position as near as possible to the longitudinal and transverse center of the tank. The discharge from any device must be unrestricted. Protective devices which deflect the flow of vapor are permissible provided the required vent capacity is maintained.

(d) *Settings of pressure relief system—(1) Primary pressure relief system.* Unless otherwise prescribed in the applicable individual specification, each primary pressure relief valve must be set to function at 120 percent of the MAWP and must start to open at not less than set pressure and not more than 110 percent of set pressure. The reclosing valve must reclose at a pressure not less than 90 percent of the set-to-discharge pressure and remain closed at lesser pressures, except as provided in § 178.346-10.

(2) *Secondary pressure relief system.* Each pressure relief valve used as a secondary relief device must be set-to-discharge at a pressure not less than 120 percent of the MAWP and be fully open at 150 percent of the MAWP.

(e) *Venting capacity of pressure relief systems.* The pressure relief system (primary and secondary, including any piping) in each tank, once fully opened, must have sufficient venting capacity to limit the tank internal pressure to a maximum of 150 percent of the tank's MAWP. This total venting capacity may not be less than that shown in Table 1 of this paragraph, except as provided in § 178.348-10.



TABLE 1.—MINIMUM EMERGENCY VENT CAPACITY

(In cubic feet free air/hour at 60 °F and 1 atm.)

Exposed area in square feet	Cubic feet free air per hour
20	15,800
30	23,700
40	31,600
50	39,500
60	47,400
70	55,300
80	63,300
90	71,200
100	79,100
120	94,900
140	110,700
160	126,500
180	142,300
200	158,100
225	191,300
250	203,100
275	214,300
300	225,100
350	245,700
400	265,000
450	283,200
500	300,600
550	317,300
600	333,300
650	348,800
700	363,700
750	378,200
800	392,200
850	405,900
900	419,300
950	432,300
1,000	445,000

Note 1: Interpolate for intermediate sizes.

(1) *Primary pressure relief system.*

Unless otherwise specified in the applicable individual specification, the primary relief system must have a minimum venting capacity of 12,000 SCFH per 350 square feet of exposed tank area, but in any case at least one fourth the required total venting capacity for the cargo tank.

(2) *Secondary pressure relief system.*

If the primary pressure relief system does not provide the required total venting capacity, additional capacity must be provided by a secondary pressure relief system.

(f) *Certification of pressure relief devices.* The manufacturer of any pressure relief device, including valves, frangible (rupture) disks, vacuum vents and combination devices must certify that the device model was designed and tested in accordance with this section and the appropriate cargo tank specification. The certificate must contain sufficient information to describe the device and its performance. The certificate must be signed by a responsible official of the manufacturer who approved the flow capacity certification.

(g) *Rated flow capacity certification test.* Each pressure relief device model must be successfully flow capacity

certification tested prior to first use. Devices having one design, size and set pressure are considered to be one model. The testing requirements are as follows:

(1) At least 3 devices of each specific model must be flow capacity tested at a pressure not greater than 130 percent of the MAWP of the cargo tank. For a device model to be certified, the capacities of the devices tested must fall within a range of plus or minus 5 percent of the average for the devices tested.

(2) The rated flow capacity of a device model may not be greater than 90 percent of the average value for the devices tested.

(3) The rated flow capacity derived for each device model must be certified by a responsible official of the device manufacturer.

(h) *Marking of pressure relief devices.* Each pressure relief device must be permanently marked with the following:

(1) Manufacturer's name;

(2) Model number;

(3) Set-to-discharge pressure, in psig; and

(4) Rated flow capacity, in SCFH at the rating pressure, in psig.

## § 178.345-11 Tank outlets.

Each tank outlet that may contain lading in any tank attitude must be equipped with a stop-valve or other leak tight closure in accordance with this section (such tank outlets, closures and associated piping must be protected in accordance with § 178.345-8).

(a) Each loading/unloading outlet must be equipped with an internal self-closing stop valve or with an external self-closing stop valve located as close as possible to the tank shell. Each self-closing valve system must be designed to close within 30 seconds of actuation. Each self-closing stop valve must be designed such that during transportation the valve is in a securely closed position such that if the actuating system is sheared off or damaged in an accident, the valve will remain closed and capable of retaining product. For external valves, the self-closing function is required only for emergency situations such as a fire or hose rupture. During normal loading/unloading operations the valve may be manually operated. In addition to normal means of closure, each internal or external self-closing stop valve must be fitted with a remotely activated means of closure located more than 10 feet from the stop valve, as specified below. Cable linkage to these closures must be corrosion resistant and effective in all types of environment and weather. Any loading/unloading connection extending beyond the self-closing stop valve must be fitted

with another stop valve at the end of such connection.

(1) For cargo tanks intended for flammable, pyrophoric, oxidizing or Poison B liquids, the remote means of closure must be activated for closure by manual or mechanical means. In addition, in case of fire each stop valve must be activated for closure by an automatic heat activated means located as close as possible to the loading/unloading connection. Thermally activated closures must activate at a temperature not over 250 °F.

(2) For cargo tanks intended exclusively for a lading other than those mentioned in paragraph (a)(1) of this section the remote means of closure may be actuated by manual or mechanical means only.

(b) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop-valve or other leak tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop-valve at the end of such connection.

## § 178.345-12 Gauging devices.

Each cargo tank except a tank intended to be filled by weight, must be equipped with a gauging device that indicates the maximum permitted liquid level to an accuracy of 0.5 percent. Gauge glasses are not permitted.

## § 178.345-13 Pressure and leakage tests.

(a) Each tank must be pressure and leak tested in accordance with this section and §§ 178.346-13(a), 178.347-13(a) or 178.348-13(a), as applicable.

(b) *Pressure test.* Each tank or tank compartment must be tested hydrostatically or pneumatically. Each tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent tanks empty and at atmospheric pressure. Each closure, except pressure relief devices and loading/unloading venting devices rated at less than the prescribed test pressure, must be in place during the test. If the venting device is not removed during the test, such device must be rendered inoperative by a clamp, plug or other equally effective restraining device, which may not prevent the detection of leaks, or damage the device. Restraining devices must be removed immediately after the test is completed.

(1) *Hydrostatic method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, the temperature of which may not exceed 100 °F. The tank must then be pressurized as prescribed in the applicable specification. The pressure



must be gauged at the top of the tank. The prescribed test pressure must be maintained for at least 10 minutes during which time the tank must be inspected for leakage, bulging, or other defect.

(2) *Pneumatic method.* A pneumatic test may be used in place of the hydrostatic test. The tank must be pressurized with air or similar gas. Test pressure must be reached gradually by increasing the pressure to one half of test pressure. Thereafter, the pressure must be increased in steps of approximately one tenth of the test pressure until test pressure is reached. Test pressure must be held for at least 5 minutes. The pressure must then be reduced to inspection pressure which must be maintained while the entire cargo tank surface is inspected for leakage or other sign of defects. The inspection method must consist of coating the entire surface of the tank, particularly each joint, with a solution of soap and water or other equally sensitive method. Suitable safeguards must be provided to protect employees and other persons should a failure occur.

(c) The cargo tank with all its accessories in place and operable must be leak tested at not less than 80 percent of tank's MAWP with the pressure maintained for at least 5 minutes.

(d) Any cargo tank that leaks, bulges or shows any other sign of defect must be rejected. Rejected cargo tanks must be suitably repaired and retested successfully prior to being returned to service. The retest after any repair must use the same method of test under which the cargo tank was originally rejected.

#### § 178.345-14 Marking.

(a) *General.* The manufacturer shall certify that each cargo tank motor vehicle has been designed, constructed and tested in accordance with the applicable Specification DOT 406, DOT 407 or DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this part) cargo tank requirements, and when applicable, with the ASME Code. The certification shall be accomplished by marking the tank as prescribed in paragraphs (b) and (c) of this section and by preparing the certificate prescribed in § 178.345-15. Metal plates prescribed by paragraphs (b), (c), (d) and (e) of this section must be permanently affixed to the tank or its integral supporting structure, by brazing, or welding around the plate perimeter. These plates must be affixed on the left side of the vehicle near the front of the cargo tank (or the front-most tank of a multi tank cargo tank motor vehicle), in a place readily accessible for inspection. The plates must be permanently and

plainly marked in English by stamping, embossing or other means in characters at least  $\frac{3}{16}$  inch high.

(b) *Nameplate.* Each cargo tank must have a corrosion resistant nameplate permanently attached to it. The following information, in addition to that required by the ASME Code, must be marked on the tank nameplate (parenthetical abbreviations may be used):

(1) DOT Specification number DOT XXX (DOT XXX), where "XXX" is replaced with the applicable specification number.

(2) Original test date, month and year (Orig. Test Date).

(3) Tank MAWP, in psig (MAWP).

(4) Tank test pressure (Test P), in psig.

(5) Tank design temperature range (Design temp. range), °F to °F.

(6) Nominal capacity (Water cap.), in gallons.

(7) Maximum design density of lading (Max. design lading dens.), in pounds per gallon.

(8) Material specification number—shell (Mat spec.—shell yyy\*\*), where "yyy" is replaced by the alloy designation and "\*\*\*\*" by the alloy type.

(9) Material specification number—heads (Mat. spec.—heads yyy\*\*), where "yyy" is replaced by the alloy designation and "\*\*\*\*" by the alloy type.

(10) Minimum thickness—shell (Min. thick.—shell), top \_\_\_\_\_, side \_\_\_\_\_, bottom \_\_\_\_\_, in inches.

(11) Minimum thickness—heads (Min. thick.—head), in inches.

(12) Manufactured thickness—shell (Mfd. shell thick.), top \_\_\_\_\_, side \_\_\_\_\_, bottom \_\_\_\_\_, in inches.

(13) Manufactured thickness—heads (Mfd. heads thick.), in inches.

(14) Weld material (Weld mat.).

(15) Exposed surface area, in square feet.

(c) *Specification plate.* Each cargo tank motor vehicle must have an additional corrosion resistant metal specification plate attached to it. The specification plate must contain the following information (parenthetical abbreviations may be used):

(1) Cargo tank motor vehicle manufacturer (CTM veh. mfr.).

(2) Cargo tank motor vehicle certification date (CTM veh. cert. date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT mfr.);

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max. load. rate, GPM) at maximum loading pressure \_\_\_\_\_ psig.

(7) Maximum unloading rate in gallons per minute (Max. unload. rate, GPM), at maximum unloading pressure \_\_\_\_\_ psig.

(8) Lining material (Lining).

(9) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

(d) *Multi-tank cargo tank motor vehicle.* For a cargo tank motor vehicle having one cargo tank or having all its cargo tanks not separated by any void space, the information required by paragraphs (b) and (c) of this section may be combined on one specification plate. When separated by a void space, each cargo tank must have an individual nameplate as required in paragraph (b) of this section. The cargo tank motor vehicle may have a combined nameplate and specification plate. When only one plate is used, the plate must be visible and not covered by any insulation and the required information must be listed on the plate from front to rear in the order of the corresponding cargo tank location.

(e) *Variable specification cargo tank.* Each variable specification cargo tank must have a corrosion resistant metal variable specification plate attached to it. The mounting of this variable specification plate must be such that only the plate identifying the applicable specification under which the tank is being operated is legible.

(1) The following information must be included (parenthetical abbreviations are authorized):

Specification DOT XXX (DOT XXX), where "XXX" is replaced with the applicable specification number.

Equipment required	Required rating <sup>1</sup>
Pressure relief devices:	
Pressure actuated type .....	_____
Fusible type .....	_____
Frangible type .....	_____
Lading discharge devices .....	_____
Top .....	_____
Bottom .....	_____
Pressure unloading fitting .....	_____
Closures:	
Manhole .....	_____
Fill openings .....	_____
Discharge openings .....	_____

<sup>1</sup> Required rating—to meet the applicable specification.

(2) If no change of information in the specification plate is required, the letters "NC" must follow the rating required. If the cargo tank is not so equipped, the word "None" must be inserted.



(3) Those parts to be changed or added must be stamped with the appropriate MC or DOT Specification markings.

(4) The alterations that must be made in order for the tank to be modified from one specification to another must be clearly indicated on the manufacturer's certificate and on the variable specification plate.

#### § 178.345.15 Certification.

(a) The manufacturer of a cargo tank motor vehicle made to any of these specifications must furnish the owner, at or before the time of delivery, the following:

(1) A certificate signed by a responsible official of the manufacturer and a Registered Inspector certifying that the cargo tank motor vehicle is constructed, tested and completed in conformance with the applicable specification. The manufacturer's and the Registered Inspector's registration number must appear on the certificate (See Subpart F, Part 107 in subchapter B of this chapter).

(2) For a variable specification cargo tank, a certificate signed by a responsible official of the manufacturer and a Registered Inspector that the cargo tank is constructed for variable specification service. The certificate must include all the information required and marked on the variable specification plate.

(b) In the case of a cargo tank motor vehicle manufactured in two or more stages, each manufacturer who performs a manufacturing operation on the incomplete vehicle or portion thereof shall furnish to the succeeding manufacturer, at or before the time of

delivery, a certificate covering the particular operation performed by that manufacturer and any certificate(s) received from previous manufacturers including the certificate received from the Design Certifying Engineer. The certificate(s) must include sufficient sketches or drawings, and other information to indicate the make, size, model and location of each valve and pressure relief device, and the arrangement of all piping associated with the tank. Each certificate must be signed by a responsible official of the manufacturing firm for the portion of the complete cargo tank motor vehicle represented thereby, such as basic tank fabrication, insulation, jacket, lining or piping. The final manufacturer shall furnish the owner with all certificates, excluding sketches and drawings.

#### § 178.346 Specification DOT 406; cargo tank motor vehicle.

##### § 178.346-1 General requirements.

(a) Each Specification DOT 406 cargo tank motor vehicle must meet the general design and construction requirements in § 178.345, in addition to the specific requirements contained in this section.

(b) *Maximum Allowable Working Pressure:* The MAWP of each cargo tank must be no lower than 2.65 psig and no higher than 4 psig.

(c) Vacuum loaded cargo tanks must not be constructed to this specification.

(d) Each cargo tank must be "constructed in accordance with the ASME Code" except as modified herein:

(1) The record-keeping requirements contained in the ASME Code Section VIII, Division I do not apply. Parts UG-

90 thru 94 of Section VIII, Division I do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(2) Loadings must be as prescribed in § 178.346-3.

(3) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.346-2. Shell sections of cargo tanks designed with a non-circular cross-section need not be given a preliminary curvature, as prescribed in UG-79.

(4) Marking, certification, data reports, and nameplates must be as prescribed in §§ 178.345-14, 178.346-14, 178.345-15, and 178.346-15.

(5) Manhole closure assemblies must conform to §§ 178.345-5 and 178.346-5.

(6) Pressure relief devices must be as prescribed in §§ 178.345-10 and 178.346-10.

(7) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.346-13.

(8) The following parts of the ASME Code, Section VIII, Division I do not apply: UG-12, UG-34, UG-77, UG-80, UG-81, and UG-96.

#### § 178.346-2 Material and thickness of material.

(a) The type and thickness of material for DOT 406 cargo tanks must conform to § 178.345-2 of this Part, but may in no case be less than that indicated in Tables I and II below.

TABLE I.—MINIMUM THICKNESS OF HEADS (OR BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT) USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH AFTER FORMING

Material	Volume capacity in gallons per inch of length								
	14 or less			Over 14 to 22			23 and over		
	MS	HSLA SS	AL	MS	HSLA SS	AL	MS	HSLA SS	AL
Thickness .....	.100	.100	.160	.115	.115	.173	.129	.129	.187



TABLE II.—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH AFTER FORMING<sup>1</sup>

Rated capacity (gallons)	MS	SS/HSLA	AL
More than 0 to at least 4,500.....	0.100	0.100	0.151
More than 4,500 to at least 8,000.....	0.115	0.100	0.160
More than 8,000 to at least 14,000.....	0.129	0.129	0.173
More than 14,000.....	0.143	0.143	0.187

<sup>1</sup> Maximum distance between bulkheads, baffles, or ring stiffeners shall not exceed 60 inches.

#### § 178.346-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

#### § 178.346-4 Joints.

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

#### § 178.346-5 Manhole assemblies.

Each manhole assembly must conform to § 178.345-5.

#### § 178.346-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must conform to § 178.345-6.

#### § 178.346-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

#### § 178.346-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

#### § 178.346-9 Pumps, piping, hoses and connections.

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

#### § 178.346-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure relief system in accordance with § 178.345-10 and this section.

(b) *Type and construction.* In addition to the pressure relief devices required in § 178.345-10:

(1) Each cargo tank must be equipped with one or more vacuum relief devices; and

(2) Each cargo tank may be equipped with one or more normal vents set to open at not less than 1 psig. Each normal vent must be designed to prevent loss of lading through the device in case

of cargo tank motor vehicle overturn. Cargo tanks equipped with a normal vent may be used only for those ladings meeting the requirements of § 173.33(c)(1)(i)(c).

(c) *Pressure settings of relief valves.* (1) Notwithstanding the requirements of § 178.345-10, each pressure relief valve must:

(i) Be set to function at 125 percent of the MAWP and not less than 3.3 psig;

(ii) Function at a pressure not greater than 110 percent of the set pressure and not less than the set pressure;

(iii) Reclose at a pressure not less than 80 percent of the set-to-discharge pressure.

(2) Each vacuum relief device must be set to open at no more than 6 ounces vacuum.

(d) *Venting capacities.*

(1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than cargo tank test pressure. The total venting capacity rated at no greater than cargo tank test pressure, must be at least that specified in the table in § 178.345-10(e).

(2) The primary pressure relief valve must have a minimum venting capacity of at least 6,000 SCFH of free air, rated at not greater than the tank test pressure.

(3) Each vacuum relief system must have sufficient capacity to limit the vacuum to 1 psig.

(4) If pressure loading or unloading devices are provided, the relief system must have adequate vapor and liquid capacity to limit the tank pressure to 130 percent of MAWP at maximum loading or unloading rate. The maximum loading and unloading rates must be included on the metal specification plate.

#### § 178.346-11 Outlets.

(a) All outlets on each tank must conform to § 178.345-11 and this section.

(b) External self-closing stop-valves are not authorized as an alternative to internal self-closing stop-valves on loading/unloading outlets.

#### § 178.346-12 Gauging devices.

Any gauging device on DOT 406 cargo tanks must conform to § 178.345-12.

#### § 178.346-13 Pressure and leakage tests.

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) *Pressure test.* Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be the greater of 5.0 psig or 1.5 times the cargo tank MAWP.

(2) Using the pneumatic test method, the test pressure must be the greater of 5.0 psig or 1.5 times the cargo tank MAWP, and the inspection pressure must be the cargo tank MAWP.

(c) *Leakage test.* Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure—Vacuum Test" 40 CFR Part 60 Appendix A, is an acceptable alternate leakage test.

#### § 178.346-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.345-14.

#### § 178.346-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

#### § 178.347 Specification DOT 407; cargo tank motor vehicle.

##### § 178.347-1 General requirements.

(a) Each specification DOT 407 cargo tank motor vehicle must conform to the general design and construction requirements in § 178.345 in addition to the specific requirements contained in this section.

(b) Each tank must be of a circular cross-section and have an MAWP of at least 25 psig.

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be "constructed and certified in accordance with the ASME Code". The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) Each cargo tank built to this specification with MAWP less than 35 psig must be "constructed in accordance with the ASME Code" except as modified herein:

(1) The record-keeping requirements contained in the ASME Code, Section VIII, Division I, do not apply. The inspection requirements of parts UG-90 thru 94 do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(2) Loadings must be as prescribed in § 178.347-3.

(3) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.347-2.



(4) Marking, certification, data reports and nameplates must be as prescribed in §§ 178.345-14, 178.347-14, 178.345-15, and 178.347-15.

(5) Manhole closure assemblies must conform to §§ 178.345-5 and 178.347-5.

(6) Pressure relief devices must be as

prescribed in §§ 178.345-10 and 178.347-10.

(7) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.347-13.

(8) The following parts of the ASME Code do not apply: UG-12, UG-34, UG-77, UG-80, and UG-81, and UG-96.

#### § 178.347-2 Material and thickness of material.

(a) The type and thickness of material for DOT 407 specification cargo tanks must conform to § 178.345-2 and this section. In no case may the thickness be less than that indicated in Tables I and II below.

TABLE I—MINIMUM THICKNESS OF HEADS, BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT) USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) AND ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH

Volume capacity in gallons per inch	10 or less	Over 10 to 14	Over 14 to 18	Over 18 to 22	Over 22 to 26	Over 26 to 30	Over 30
Thickness (MS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (HSLA).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (SS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (AL).....	0.160	0.160	0.173	0.187	0.194	0.216	0.237

TABLE II—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) AND ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH

Volume capacity in gallons per inch	10 or less	Over 10 to 14	Over 14 to 18	Over 18 to 22	Over 22 to 26	Over 26 to 30	Over 30
Thickness (MS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (HSLA).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (SS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (AL).....	0.151	0.151	0.160	0.173	0.194	0.216	0.237

#### § 178.347-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

#### § 178.347-4 Joints.

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

#### § 178.347-5 Manhole assemblies.

Each manhole assembly must conform to § 178.345-5, except that each manhole assembly must be capable of withstanding internal fluid pressures of 40 psig or test pressure of the tank, whichever is greater.

#### § 178.347-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.345-6.

#### § 178.347-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

#### § 178.347-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

#### § 178.347-9 Pumps, piping, hoses and connections.

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

#### § 178.347-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in accordance with § 178.340-10 and this section.

(b) *Type and construction.* Vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum.

(c) *Pressure settings of relief valves.* The setting of pressure relief valves must be in accordance with § 178.345-10(d).

(d) *Venting capacities.*

(1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than 150 percent of the cargo tank MAWP. The total venting capacity, rated at no greater than 150 percent of the cargo tank MAWP, must be at least that specified in the table in § 178.345-10(e).

(2) The vacuum relief system must limit the vacuum to less than 80 percent of the design vacuum capability of the cargo tank.

(3) If pressure loading or unloading devices are provided, the relief system must have adequate vapor and liquid capacity to limit the tank pressure to 130

percent of the MAWP at maximum loading or unloading rate. The maximum loading or unloading rate must be included on the metal specification plate.

#### § 178.347-11 Outlets.

All outlets on each tank must conform to § 178.345-11.

#### § 178.347-12 Gauging devices.

Any gauging device on DOT 407 cargo tanks must conform to § 178.345-12.

#### § 178.347-13 Pressure and leakage test.

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) *Pressure test.* Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be at least 40 psig or 1.5 times tank MAWP, whichever is greater.

(2) Using the pneumatic test method, the test pressure must be 40 psig or 1.5 times tank MAWP, whichever is greater, and the inspection pressure is tank MAWP.

#### § 178.347-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.345-14.



**§ 178.347-15 Certification.**

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

**§ 178.348 Specification DOT 412; cargo tank motor vehicle.****§ 178.348-1 General requirements.**

(a) Each specification DOT 412 cargo tank motor vehicle must conform to the general design and construction requirements in § 178.345 in addition to the specific requirements of this section.

(b) The MAWP of each cargo tank must be at least 5 psig.

(c) The MAWP for each cargo tank designed to be loaded by vacuum must be at least 25 psig internal and 15 psig external.

(d) Each cargo tank having a MAWP greater than or equal to 15 psig must be of circular cross-section.

(e) Each cargo tank having a—

(1) MAWP greater than or equal to 15 psig must be "constructed and certified

in conformance with the ASME Code"; or

(2) MAWP less than 15 psig must be "constructed in accordance with the ASME Code," except as modified herein:

(i) The record-keeping requirements contained in the ASME Code, Section VIII, Division I, do not apply. Parts UG-90 thru 94 of Section VIII, Division I do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(ii) Loadings must be as prescribed in § 178.348-3.

(iii) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.348-2. Shell sections of cargo tanks designed with a non-circular cross-

section need not be given a preliminary curvature as prescribed in UG-79.

(iv) Marking, certification, data reports, and nameplates must be as prescribed in §§ 178.345-14, 178.348-14, 178.345-15, and 178.348-15.

(v) Manhole closure assemblies must conform to §§ 178.345-5 and 178.348-5.

(vi) Pressure relief devices must be as prescribed in §§ 178.345-10 and 178.348-10.

(vii) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.348-13.

(viii) The following parts of the ASME Code, Section VIII, Division I do not apply: UG-12, UG-34, UG-77, UG-80, UG-81, and UG-96.

**§ 178.348-2 Material and thickness of material.**

(a) The type and thickness of material for DOT 412 cargo tanks must conform to § 178.345-2 of this Part, but in no case may the thickness be less than that indicated in Tables I and II below.

**TABLE I.—MINIMUM THICKNESS OF HEADS (AND BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT) USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM EXPRESSED IN DECIMALS OF AN INCH**

Volume capacity (gallons per inch)	10 or less				Over 10 to 14				Over 14 to 18			18 and over		
Lading density at 60 °F in pounds per gallon...	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs
Thickness (inch), steel.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.157	.250	.312
Thickness (inch), aluminum.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.227	.360	.450

**TABLE II.—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA) OR AUSTENITIC STAINLESS STEEL (SS)—EXPRESSED IN DECIMALS OF AN INCH**

Volume capacity in gallons per inch	10 or less				Over 10 to 14				Over 14 to 18			18 and over		
Lading density at 60 °F in pounds per gallon...	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs
Thickness (inch), steel.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.157	.250	.312
Thickness (inch), aluminum.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.227	.360	.450
Thickness (steel):														
Distances between heads (and bulkheads baffles and ring stiffeners when used as tank reinforcement):														
36 in. or less.....	.100	.129	.157	.187	.100	.129	.157	.187	.100	.129	.157	.129	.157	.187
Over 36 in. to 54 inches.....	.100	.129	.157	.187	.100	.129	.157	.187	.129	.157	.187	.157	.250	.250
Over 54 in. to 60 inches.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.187	.250	.312
Thickness (aluminum):														
Distances between heads (and bulkheads baffles and ring stiffeners when used as tank reinforcement):														
36 in. or less.....	.144	.187	.227	.270	.144	.187	.227	.270	.144	.187	.227	.187	.227	.270
Over 36 in. to 54 inches.....	.144	.187	.227	.270	.144	.187	.227	.270	.187	.227	.270	.157	.360	.360
Over 54 in. to 60 inches.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.270	.360	.450

Note: Thickness of aluminum material = Steel thickness from tables I and II times  $(3 \times 10^{-7} \text{ divided by } E) \frac{1}{2}$ , where: E = modulus of elasticity of material to be used.



**§ 178.348-3 Structural integrity.**

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

**§ 178.348-4 Joints.**

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

**§ 178.348-5 Manhole assemblies.**

Each manhole assembly must conform to § 178.345-5.

**§ 178.348-6 Supports and anchoring.**

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.345-6.

**§ 178.348-7 Circumferential reinforcement.**

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

**§ 178.348-8 Accident Damage Protection.**

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

**§ 178.348-9 Pumps, piping, hoses and connections.**

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

**§ 178.348-10 Pressure relief.**

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in accordance with § 178.340-10 and this section.

(b) *Type and construction.* Vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum.

(c) *Pressure settings of relief valves.* The setting of the pressure relief devices must be in accordance with § 178.345-10(d), except as provided in paragraph (d)(3) of this section.

(d) *Venting capacities.* (1) The vacuum relief system must limit the vacuum to less than 80 percent of the design vacuum capability of the cargo tank.

(2) If pressure loading or unloading devices are provided, the pressure relief system must have adequate vapor and liquid capacity to limit tank pressure to the cargo tank test pressure at the maximum loading or unloading rate. The maximum loading and unloading rates must be included on the metal specification plate.

(3) Cargo tanks used in dedicated service for materials classed as corrosive material, with no secondary hazard, may have a total venting capacity which is less than required by § 178.345-10(e). The total venting capacity for these cargo tanks must be

determined in accordance with the formula contained in § 178.270-11(d)(3).

**§ 178.348-11 Outlets.**

All outlets on each tank must conform to § 178.345-11 and this section.

**§ 178.348-12 Gauging devices.**

Any gauging device must conform to § 178.345-12.

**§ 178.348-13. Pressure and leakage test.**

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) Pressure test. Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be at least 1.5 times MAWP.

(2) Using the pneumatic test method, the test pressure must be at least 1.5 times tank MAWP, and the inspection pressure is tank MAWP.

**§ 178.348-14 Marking.**

Each cargo tank motor vehicle must be marked and certified in accordance with § 178.345-14.

**§ 178.348-15 Certification.**

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

101. A new part 180 is added to Subchapter C of Title 49 to read as follows:

**PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**

**Subpart A—General**

Sec.

180.1 Purpose and scope.

180.2 Applicability

180.3 General Requirements.

**Subpart B-D [Reserved]****Subpart E—Qualification and Maintenance of Cargo Tanks**

180.401 Applicability.

180.403 Definitions.

180.405 Qualification of cargo tanks.

180.407 Requirements for test and inspection of cargo tanks.

180.409 Minimum qualifications for inspectors and testers.

180.411 Acceptable results of tests and inspections.

180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

180.415 Test and inspection markings.

180.417 Reporting and record retention requirements.

Authority: 49 U.S.C. 1803, 1804, 1806, 1808; 49 CFR Part 1, unless otherwise specified.

**Subpart A—General****§ 180.1 Purpose and scope.**

This part prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter.

**§ 180.2 Applicability.**

(a) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

(b) Any person who performs a function prescribed in this part is considered subject to the regulations of this subchapter when that person—

(1) Makes any representation indicating compliance with one or more of the requirements of this part; or

(2) Reintroduces a packaging into commerce that bears markings indicating compliance with this part.

**§ 180.3 General requirements.**

(a) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or an exemption pertaining to this part issued under Subchapter B of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired, or retested, as appropriate, in accordance with this part, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter.

(b) The representations, markings, and certifications subject to the prohibitions of paragraph (a) of this section include:

(1) Identifications that include the letters "DOT", "MC", "ICC", or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT";

(3) Test dates displayed in association with specification, registration, approval, or exemption markings indicating conformance to a test or retest requirement of this subchapter, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter;

(4) Documents indicating conformance to the testing, inspection, maintenance or other continuing qualification requirements of this part; and

(5) Sales literature, including advertising, indicating that the packaging or container represented therein conforms to requirements



contained in Subchapter B or C of this chapter.

#### Subparts B-D [Reserved]

#### Subpart E—Qualification and Maintenance of Cargo Tanks

##### § 180.401 Applicability.

This subpart prescribes requirements, in addition to those contained in Parts 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic testing of a cargo tank.

##### § 180.403 Definitions.

In addition to the definitions contained in §§ 171.8 and 178.345-1 of this subchapter, the following definitions apply to this subpart:

"*Modification*" means any change to a cargo tank's original design and construction which would affect the structural integrity or lading retention capability of the cargo tank. Changes to appurtenances, such as fender attachments, lighting brackets, and ladder brackets, are excluded from this definition. Replacement of components such as valves, vents, and fittings with a component of a similar design and the same size is not considered a modification. For the purposes of this Subpart, "stretching" is not considered a modification.

"*Owner*" means the owner of a cargo tank motor vehicle used for the transportation of hazardous materials, or his authorized agent.

"*Rebarrelling*" means replacing more than 50 percent of the combined shell and head material of a cargo tank.

"*Repair*" means any welding on pressure parts done to return a cargo tank to its original design and construction, or to a condition prescribed for that cargo tank specification in effect at the time of repair.

"*Stretching*" means any change in length, width or diameter of the cargo tank, or any change to a cargo tank motor vehicle's undercarriage that may affect the cargo tank's structural integrity.

##### § 180.405 Qualification of cargo tanks.

(a) *General.* Unless otherwise provided in this subpart, each cargo tank used for the transportation of hazardous material must be an authorized packaging.

(b) *Cargo tank specifications.* To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the

specific lading, and an applicable specification in effect on the date the initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§ 178.337, § 178.338, § 178.345, § 178.346, § 178.347, § 178.348 of this subchapter). However, construction of MC 306, MC 307, or MC 312 cargo tanks meeting the requirements of the applicable specification in effect on June 12, 1989, is authorized until December 5, 1990.

(c) *Cargo tank specifications no longer authorized for construction.* (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this Part, provided tank construction began before the date listed in Column 2:

Column 1	Column 2
MC 300.....	Sept. 2, 1967.
MC 301.....	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330.....	May 15, 1967.
MC 306, MC 307, MC 312.....	Dec. 5, 1990.

(2) A cargo tank of a specification listed in paragraph (c)(1) of this section may have its pressure relief devices and outlets modified as follows:

(i) A Specification MC 300, MC 301, MC 302, MC 303, or MC 305 cargo tank, to conform with a Specification MC 306 or DOT 406 cargo tank (See §§ 178.346-10 and 178.346-11 of this subchapter).

(ii) A specification MC 306 cargo tank to conform to a Specification DOT 406 cargo tank (§§ 178.346-10 and 178.346-11 of this subchapter).

(iii) A Specification MC 304 or cargo tank, to conform with a Specification MC 307 or DOT 407 cargo tank (See §§ 178.347-10 and 178.347-11 of this subchapter).

(iv) A Specification MC 307 cargo tank, to conform with a Specification DOT 407 cargo tank (See §§ 178.347-10 and 178.347-11 of this subchapter).

(v) A Specification MC 310 or MC 311 cargo tank, to conform with a Specification MC 312 or DOT 412 cargo tank (See §§ 178.348-10 and 178.348-11 of this subchapter).

(vi) A Specification MC 312 cargo tank, to conform with a Specification DOT 412 cargo tank (See §§ 178.348-10 and 178.348-11 of this subchapter).

(vii) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank (See §§ 178.337-8 and 178.337-9 of this subchapter).

(d) *MC 338 cargo tank.* The owner of a cargo tank that conforms to and was used under the terms of an exemption

issued before October 1, 1984, that authorizes the transportation of a cryogenic liquid shall remove the exemption number stenciled on the cargo tank and stamp the specification plate (or a plate placed adjacent to the specification plate) "DOT MC 338" followed by the exemption number, for example, "DOT MC 338-E \* \* \* \*". (Asterisks to be replaced by the exemption number). The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at its principal place of business a copy of the last exemption in effect. No new construction of cargo tanks pursuant to such exemption is authorized.

(1) The holding time must be determined, as required in § 178.338-9 of this subchapter, on each cargo tank or on at least one cargo tank of each design. Any subsequent cargo tank manufactured to the same design type (see § 178.320), if not individually tested, must have the optional test regimen performed during the first shipment (see §§ 178.338-9 (b) and (c) of this subchapter).

(2) The holding time determined by test for one authorized cryogenic liquid may be used as the basis for establishing the holding time for other authorized cryogenic liquids.

(e) *MC 331 cargo tanks.* The owner of a MC 331 (§ 178.337 of this subchapter) cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of ethane, refrigerated liquid; ethane-propane mixture, refrigerated liquid; or hydrogen chloride, refrigerated liquid shall remove the exemption number stenciled on the cargo tank and stamp the exemption number on the specification plate (or a plate placed adjacent to the specification plate), immediately after the DOT Specification, for example, "DOT MC 331-E \* \* \* \*". (Asterisks to be replaced by the exemption number.) The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at its principal place of business a copy of the last exemption in effect.

(f) *MC 306, MC 307, MC 312 cargo tanks.* A Registered Inspector and the owner of a MC 306, MC 307 or MC 312 cargo tank motor vehicle constructed in accordance with and used under an exemption issued before December 12, 1989, that authorizes a condition specified in this paragraph shall



examine the cargo tank motor vehicle and its design to determine if it meets the requirements of the applicable MC 306, MC 307 or MC 312 specification in effect at the time of manufacture, except as specified herein.

(1) A cargo tank motor vehicle constructed after August 1, 1981, or the date specified in the applicable exemption, in conformance with the following conditions that apply, may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section:

(i) A vacuum-loaded cargo tank must have an ASME Code stamped specification plate marked with a minimum internal design pressure of 25 psig, and be designed for a minimum external design pressure of 15 psig.

(ii) A cargo tank having an outlet equipped with an external self-closing stop valve must have the stop valve and associated piping protected within the vehicle's rear-end tank protection device, the vehicle frame or an equally adequate accident damage protection device (See §§ 178.345-8 of this subchapter.) The external self-closing stop valve must be equipped with a remotely actuated means of closure consisting as follows:

(A) For a cargo tank used in other than corrosive service, the remote means of closure must be activated for closure by manual or mechanical means and, in case of fire, by an automatic heat activated means.

(B) For a cargo tank used in corrosive service, the remote means of closure may be actuated by manual or mechanical means only.

(iii) A cargo tank having an unreinforced portion of the shell exceeding 60 inches must have the circumferential reinforcement located so that the thickness and tensile strength of shell material in combination with the frame and circumferential reinforcement produces a structural integrity at least equal to that prescribed in § 178.345-3 of the specification in effect at time of manufacture.

(iv) A cargo tank having a projection from the tank shell or head that may contain lading in any tank position is authorized, provided such projection is as strong as the tank shell or head and is located within the motor vehicle's rear-end tank protection or other appropriate accident damage protection device.

(v) A cargo tank may be constructed of nickel, titanium, or other ASME sheet or plate materials in accordance with an exemption.

(2) A vacuum-loaded cargo tank constructed after August 1, 1981, or the date specified in the applicable

exemption, in conformance with paragraph (f)(1) of this section, except that an outlet is equipped with an external valve which is not equipped with a self-closing feature:

(i) Must be equipped with a self-closing valve prior to June 12, 1992.

(ii) May be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section after the cargo tank motor vehicle has been equipped with the self-closing valve.

(3) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i), may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section.

(4) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i), and an outlet is equipped with an external valve which is not equipped with a self-closing feature:

(i) Must be equipped with a self-closing valve prior to June 12, 1992.

(ii) May be remarked and certified in accordance with paragraphs (f)(5) and (6) of this section after the cargo tank motor vehicle has been equipped with the self-closing valve.

(5) The owner of a cargo tank for which a determination has been made that the cargo tank is in conformance with paragraph (f) (1), (2), (3), or (4) of this section shall complete a written certification, in English, signed by the owner and containing at least the following information:

(i) A statement certifying that each cargo tank conforms to § 180.405 (f) (1), (2), (3), or (4);

(ii) The applicable DOT exemption number, the applicable specification number and the owner's and manufacturer's serial number for the cargo tank;

(iii) A statement setting forth any modifications made to bring the cargo tank into conformance with § 180.405(f) (1), (2), (3), or (4), or the applicable specification;

(iv) A statement identifying the person certifying the cargo tank and the date of certification.

(6) The owner of a certified cargo tank shall remove the exemption number stenciled on the cargo tank and must durably mark the specification plate (or a plate placed adjacent to the specification plate) "MC ++ + -E \*\*\*\*####" (where "++ +" is to be replaced by the applicable specification number, " \* \* \* " by the exemption number and "# # # #" by the alloy.)

(7) During the period the cargo tank is in service, and for one year thereafter,

the owner of a cargo tank that is certified and remarked in this manner must retain on file at its principal place of business a copy of the certificate and the last exemption in effect.

(g) *Cargo tank manhole assemblies.*

(1) On or before June 13, 1994, each owner of a cargo tank manufactured prior to December 12, 1989, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with § 178.345-5 except for the marking requirements in § 178.345-5(e) and the hydrostatic testing requirement in 178.345-5(b) of this section. Manhole assemblies installed on an MC 300, MC 301, MC 302, MC 303, MC 305, or MC 306 cargo tank prior to December 12, 1989, which are marked or certified in writing as conforming to TTMA RP No. 61 may be considered to be in compliance with this paragraph. Any manhole assembly installed on a cargo tank after December 12, 1989, must meet the requirements in § 178.345-5.

(2) The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, or MC 306 cargo tank manufactured prior to December 12, 1989, which is equipped with a manhole assembly or assemblies manufactured prior to December 12, 1989, which are not certified in conformance with TTMA RP No. 61 may have them certified in accordance with the Recommended Practice by the manufacturer of the manhole closure. Those manhole closures which the manufacturer cannot identify and certify, or for which the manufacturer cannot be identified, may be tested and certified in accordance with TTMA TB No. 107. These certifications must be performed on or before June 13, 1994.

(3) The owner of five or more DOT specification cargo tanks requiring retrofit or certification of the manhole closure must retrofit or certify at least 20 percent of the affected cargo tanks each year beginning in 1990 until all affected manhole closures on cargo tanks have been retrofitted or certified. The owner of fewer than 5 DOT specification cargo tanks has until June 13, 1994 to retrofit or certify the manhole closures.

(h) *Pressure Relief System.* After June 12, 1991, any reclosing pressure relief valve installed on any cargo tank must be capable of reseating to a leak-tight condition, after a pressure surge and release of a lading volume of not more than one gallon. This requirement shall be considered to be met if the pressure relief valve successfully withstands the testing procedure outlined in TTMA RP No. 81.89 "Performance of Spring Loaded Pressure Relief Valves on MC



306, MC 307, and MC 312 Tanks." with the exceptions noted in § 178.345-10(b)(3). After June 13, 1994, any pressure relief system installed on a DOT 406, DOT 407, or DOT 412 cargo tank must meet the requirements in § 178.345-10(b).

(i) *Flammable cryogenic liquids.* Each cargo tank used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time (See § 173.318(g)(3) of this subchapter.)

(j) *Withdrawal of certification.* A specification cargo tank that for any reason no longer meets the applicable specification may not be used to transport hazardous materials unless the cargo tank is repaired and retested in accordance with §§ 180.413 and 180.407 prior to being returned to hazardous materials service. If the cargo tank is not in conformance with the applicable specification requirements, the specification plate on the cargo tank must be removed, obliterated or securely covered. The details of the conditions necessitating withdrawal of the certification must be recorded and signed on the written certificate for that cargo tank. The vehicle owner shall retain the certificate for at least 1 year after withdrawal of the certification.

(k) *DOT specification cargo tank with no marked design pressure or a marked design pressure of less than 2.65 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank, which has a pressure relief system set at 3 psig, shall mark or remark the cargo tank with an MAWP or design pressure of not greater than 2.65 psig.

(l) *MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 cargo tank—Rear accident damage protection.* (1) Notwithstanding the requirements in § 180.405(b), the applicable specification requirement for a rear bumper or rear-end tank protection device on MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks does not apply to a cargo tank truck (power unit) until July 1, 1992, if the cargo tank truck—

(i) Was manufactured before July 1, 1989;

(ii) Is used to transport gasoline or any other petroleum distillate product; and

(iii) Is operated in combination with a cargo tank full trailer. However, an empty cargo tank truck, without a cargo tank full trailer attached, may be operated without the required rear bumper or rear-end tank protection device on a one-time basis while being transported to a repair facility for installation of a rear bumper or rear-end protection device.

(2) Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end protection device must be in the form of a rear-end tank protection device meeting the requirements of § 178.345-8(d) or a rear bumper meeting the following:

(i) The bumper shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit.

(ii) The dimensions of the bumper shall conform to § 393.86 of this title.

(iii) The structure of the bumper shall be designed to withstand, without leakage of lading, the impact of the vehicle with rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the bumper material. Such impact shall be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle.

#### § 180.407 Requirements for test and inspection of cargo tanks.

(a) *General.* (1) A cargo tank constructed in accordance with a DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for shipment until the test or inspection has been successfully completed. This paragraph does not apply to any cargo tank filled prior to the test or inspection due date.

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

(3) A person witnessing or performing a test or inspection specified in this section must meet the minimum qualifications prescribed in § 180.409.

(4) Each cargo tank which has successfully passed a test or inspection specified in this section must be marked in accordance with § 180.415.

(5) A cargo tank which fails a prescribed test or inspection must:

(i) Be repaired and retested in accordance with § 180.413; or

(ii) Be removed from hazardous materials service and the specification plate removed, obliterated or covered in a secure manner.

(b) *Conditions requiring test and inspection of cargo tanks.* Without regard to any other test or inspection requirements, a cargo tank must be

tested and inspected in accordance with this section prior to further use if:

(1) The cargo tank shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation service.

(2) The cargo tank has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

(3) The cargo tank has been out of hazardous materials transportation service for a period of one year or more.

(4) The cargo tank has been modified from its original design specification.

(5) The Department so requires based on the existence of probable cause that the cargo tank is in an unsafe operating condition.

(c) *Periodic test and inspection.* Each cargo tank must be tested and inspected as specified in the following table by an inspector meeting the qualifications in § 180.409.

Test or inspection	Cargo tank, configuration, and service	Period
<b>Inspections</b>		
External visual	All cargo tanks designed to be loaded by vacuum with full opening rear head.	6 mos.
	All other cargo tanks	1 yr.
Internal visual	All insulated cargo tanks except MC 330, MC 331, MC 338.	1 yr.
	All cargo tanks transporting lading corrosive to the tank.	1 yr.
Lining/cladding	All other cargo tanks except MC 338.	5 yr.
	All lined or clad cargo tanks transporting lading corrosive to the tank.	1 yr.
<b>Tests</b>		
Leakage Pressure (hydrostatic or pneumatic) (See Notes 1 and 2)	All cargo tanks except MC 338	1 yr.
	All cargo tanks which are insulated with no manhole or insulated and lined, except MC 338.	1 yr.
Thickness over entire tank	All cargo tanks designed to be loaded by vacuum with full opening rear head.	2 yrs.
	MC 330 and MC 331 cargo tanks in chlorine service.	2 yr.
	All other cargo tanks	5 yr.
	All unlined cargo tanks in corrosive service, except MC 338.	2 yr.

Note 1: Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.

Note 2: Pressure testing is not required for uninsulated lined or clad cargo tanks, with a design pressure or MAWP less than 15 psig, which receive an external visual inspection and lining inspection at least once each year.

(d) *External visual inspection and testing.* (1) Where insulation precludes external visual inspection, the cargo tank shall receive a visual internal inspection in accordance with § 180.407(e). Where visual inspection is precluded by both internal coating and external insulation, or when the cargo tank is not equipped with a manhole or inspection opening, the tank shall be hydrostatically or pneumatically tested in accordance with 180.407(c) and § 180.407(g).



(2) The external visual inspection and testing must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded or abraded areas, dents, distortions, defects in welds and any other conditions, including leakage, that might render the tank unsafe for transportation service;

(ii) The piping, valves, and gaskets must be carefully inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the tank unsafe for transportation service;

(iii) All devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets;

(iv) All emergency devices and valves including self-closing stop valves, excess flow valves and remote closure devices must be free from corrosion, distortion, erosion and any external damage that will prevent safe operation. Remote closure devices and self-closing stop valves must be functioned to demonstrate proper operation;

(v) Missing bolts, nuts and fusible links must be replaced, and loose bolts and nuts must be tightened;

(vi) All required markings on the cargo tank must be legible;

(vii) The cargo tank motor vehicle must conform to Part 393 of this title (the Federal Motor Carrier Safety Regulations) and, where appropriate, Part 571 of this title (the Federal Motor Vehicle Safety Standards);

(viii) All major appurtenances on the cargo tank including, but not limited to, the upper coupler (fifth wheel) assembly, suspension system attachments, and connecting structures, must be inspected for any corrosion or damage which might prevent safe operation.

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at the required set pressure and reseal to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(4) Corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i) (2), (3), (5) and (6) of this section.

(5) The gaskets on any full opening rear head must be:

(i) visually inspected for cracks or splits caused by weather or wear; and  
(ii) replaced if cuts or cracks which are likely to cause leakage, or are of a depth one-half inch or more, are found.

(6) The inspector must record the results of the external visual examination as specified in § 180.417(b).

(e) *Internal visual inspection.* (1) When the cargo tank is not equipped with a manhole or inspection opening, the tank shall be hydrostatically or pneumatically tested in accordance with § 180.407(c) and § 180.407(g).

(2) The internal visual inspection must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service.

(ii) If lined, the lining material must be inspected for defects. Tank liners must be inspected as specified in § 180.407(f).

(3) At the time of the internal inspection, tank head and shell areas covered by the upper skid plate must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service.

(4) Corroded or abraded areas must be thickness tested in accordance with paragraphs (i) (2), (3), (5) and (6) of this section.

(5) Degraded or defective areas of the tank liner must be removed and tank shell or head below the defect must be inspected. Corroded areas must be thickness tested in accordance with § 180.407(i).

(6) The inspector must record the results of the internal visual inspection as specified in § 180.417(b).

(f) *Lining inspection.* The integrity of the lining on all lined cargo tanks, when lining is required by this Subchapter, must be verified at least once each year as follows:

(1) Rubber (elastomeric) lining must be tested for leaks as follows:

(i) Equipment shall consist of: (A) a high frequency spark tester capable of producing sufficient voltage to insure proper calibration;

(B) A probe with an "L" shaped  $\frac{3}{32}$  inch diameter wire with up to a 12-inch bottom leg or equally sensitive probe; and

(C) A steel calibration block with a known leak, equivalent to a puncture caused by a 22 gauge hypodermic needle, lined with the same material as that to be tested.

(ii) The probe shall be passed over the surface of calibration block in a constant uninterrupted manner until the

leak is found. The leak is detected by the white or light blue spark formed. (A leak-free lining causes a dark blue or purple spark). The voltage shall be adjusted to the lowest setting that will produce a minimum 0.5 inch spark measured from the top of the lining to the probe. The spark tester shall be calibrated periodically using a test calibration block, using the same power source, probe and cable length, and to assure that the setting on the probe has not changed.

(iii) After calibration, the probe must be passed over the lining in an uninterrupted stroke.

(iv) Leaks that are found shall be marked for repair using chalk.

(2) Linings made of other than rubber (elastomeric material) must be tested using equipment and procedures prescribed by the lining manufacturer.

(g) *Pressure retest.* (1) *Test Procedure—*(i) As part of the pressure test, the inspector must perform an external and internal visual inspection, except that on an MC 338 cargo tank, or a cargo tank not equipped with a manhole or inspection opening, an internal inspection is not required.

(ii) All reclosing pressure relief valves must be:

(A) Removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve must open at the required set pressure and reseal to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification; or,

(B) Replaced.

(iii) Each cargo tank must be tested hydrostatically or pneumatically to the minimum internal pressure specified in the following table:

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306	3 psig or design pressure, whichever is greater.
MC 304, 307	40 psig or 1.5 times the design pressure, whichever is greater.
MC 310, 311, 312	3 psig or 1.5 times the design pressure, whichever is greater.
MC 330, 331	1.5 times either the MAWP or the re-rated pressure, whichever is applicable.
MC 338	1.25 times either the MAWP or the re-rated pressure, whichever is applicable.
DOT 406	5 psig or 1.5 times the MAWP, whichever is greater.
DOT 407	40 psig or 1.5 times the MAWP, whichever is greater.
DOT 412	1.5 times the MAWP.

(iv) Each owner of 5 or more MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311,



or MC 312 cargo tanks must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 1990. The owner of fewer than five MC specification cargo tanks has until June 13, 1994, to pressure test these units.

(v) Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure.

(vi) All closures except pressure relief devices must be in place during the test. All prescribed loading and unloading venting devices rated at less than test pressure may be removed during the test. If retained, the devices must be rendered inoperative by clamps, plugs, or other equally effective restraining devices. Restraining devices may not prevent detection of leaks or damage the venting devices and must be removed immediately after the test is completed.

(vii) *Hydrostatic test method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, at a temperature not exceeding 100 °F. The tank must then be pressurized to not less than the pressure specified in paragraph (g)(1)(iii) of this section. The tank, including its closures, must hold the prescribed test pressure for at least 10 minutes during which time it shall be inspected for leakage, bulging or any other defect.

(viii) *Pneumatic test method.* The tank must be pressurized with air or a similar gas. The pneumatic test pressure in the tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until the required test pressure has been reached. The test pressure must be held for at least 5 minutes. The pressure must then be reduced to the MAWP, which must be maintained during the time the entire tank surface is inspected. During the inspection, a suitable method must be used for detecting the existence of leaks. This method must consist either of coating the entire surface of all joints under pressure with a solution of soap and water, or using other equally sensitive methods. When a pneumatic test is performed, suitable safeguards should be provided to protect employees and other persons should a failure occur.

(2) When testing an insulated cargo tank, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after test pressure is reached, or the vacuum integrity cannot be maintained in the insulation space. If an MC 338 cargo tank used for the

transportation of a flammable gas or oxygen, refrigerated liquid is opened for any reason, the cleanliness must be verified prior to closure using the procedures contained in § 178.338-15 of this subchapter.

(3) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, or any other hazardous materials that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code) used for the transportation of liquefied petroleum gas must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with Section V of the ASME Code and CGA Technical Bulletin TB-2. This paragraph does not apply to cargo tanks that do not have manholes. (See § 180.417(c) for reporting requirements.)

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least 1.5 times the heating system design pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

(5) *Exceptions.* (i) Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.

(ii) Pressure testing is not required for uninsulated lined or clad cargo tanks, with a design pressure or MAWP less than 15 psig, which receive an external visual inspection and a lining inspection at least once each year.

(6) *Acceptance criteria.* A cargo tank that leaks, fails to retain test pressure or pneumatic inspection pressure, shows distortion, excessive permanent expansion, or other evidence of weakness that might render the cargo tank unsafe for transportation service, may not be returned to service.

(7) The inspector must record the results of the pressure test as specified in § 180.417(b).

(h) *Leakage test.* (1) Each cargo tank shall be leak tested in accordance with § 180.407(c). The cargo tank, with all valves and accessories in place and operative, must be tested at not less than 80 percent of the tank design pressure or MAWP, whichever is marked on the certification or specification plate. The pressure must be maintained for at least 5 minutes. The leakage test must include product piping. MC 330 and MC 331 cargo tanks may be leak tested with the hazardous materials contained in the tank during the test. Suitable safeguards shall be provided to protect employees and other persons should a failure occur.

(2) Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," 40 CFR Part 60 Appendix A, is an acceptable alternative test.

(3) A cargo tank that fails to retain leakage test pressure may not be returned to service as a specification cargo tank.

(4) The inspector must record the results of the leakage test as specified in § 180.417(b).

(i) *Thickness testing.* (1) The shell and head thickness of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be measured at least once every 2 years, except that cargo tanks measuring less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, must be tested annually.

(2) Measurements must be made using a device capable of accurately measuring thickness to 0.002 of an inch.

(3) Any person performing ultrasonic thickness testing must be trained in the proper use of the thickness testing device used.

(4) Thickness testing must be performed in the following areas, as a minimum:

(i) Areas of the tank shell and heads and shell and head area around any piping that retains lading;

(ii) Areas of high shell stress such as the bottom center of the tank;

(iii) Areas near openings;

(iv) Areas around weld joints;

(v) Shell reinforcements;

(vi) Appurtenance attachments;

(vii) Upper coupler (fifth wheel) assembly attachments;

(viii) Suspension system attachments and connecting structures; and



(ix) Known thin areas in the tank shell and nominal liquid level lines.

(5) An owner of a cargo tank that no longer conforms with the minimum prescribed thickness may not return the cargo tank to hazardous materials service. The tank's specification plate must be removed, obliterated or covered in a secure manner.

(6) The inspector must record the results of the thickness test as specified in § 180.417(b).

#### § 180.409 Minimum qualifications for inspectors and testers.

(a) Any persons performing or witnessing the inspections and tests specified in § 180.407(c) must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed.

(b) Additional requirements. (1) *Thickness test.* Persons performing thickness testing must be trained in the use of the thickness testing device used in accordance with the thickness testing device manufacturer's instruction.

(2) *Pressure test.* Persons performing the pressure test must be trained and experienced in conducting a pressure test in accordance with the requirements in the ASME Code. The person performing the pressure test may be a Registered Inspector or an employee of a carrier or cargo tank owner. If the person performing the pressure test is not a Registered Inspector:

(i) The employer of the tester must submit the following information to the Director, Office of Hazardous Materials Transportation, Attn: (DHM-32), Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590:

(A) Name; and

(B) Street address, mailing address and telephone number of each facility where pressure testing will be performed.

(ii) A copy of the tester's qualifications must be retained with the documents required by § 180.417(b).

#### § 180.411 Acceptable results of tests and inspections.

(a) *Corroded or abraded areas.* The minimum thickness may not be less than that prescribed in the applicable specification.

(b) *Dents, cuts, digs and gouges.* (See CGA Pamphlet C-6 for evaluation procedures.)

(1) For dents at welds or that include a weld, the maximum allowable depth is  $\frac{1}{2}$  inch. For dents away from welds, the maximum allowable depth is  $\frac{1}{10}$  of the greatest dimension of the dent, but in no case may the depth exceed one inch.

(2) The minimum thickness remaining beneath a cut, dig, or gouge may not be less than that prescribed in the applicable specification.

(c) *Weld or structural defects.* Any cargo tank with a weld defect such as a crack, pinhole, or incomplete fusion, or a structural defect must be taken out of hazardous materials service until repaired.

(d) *Leakage.* All sources of leakage must be properly repaired prior to returning a tank to hazardous materials service.

(e) *Relief valves.* Any pressure relief valve that fails to open and reclose at the prescribed pressure must be repaired or replaced.

(f) *Liner integrity.* Any defect shown by the test must be properly repaired.

(g) *Pressure test.* Any tank that fails to meet the acceptance criteria found in the individual specification that applies must be properly repaired.

#### § 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(a) Any repair, modification, stretching, or rebarrelling of a cargo tank must be performed in conformance with the requirements of this section. Except for work performed on a MC 300, MC 301, MC 303, MC 304, MC 305, MC 306, MC 307, MC 311, or MC 312 before December 5, 1990, the repair, modification, stretching, or rebarrelling must be performed by:

(1) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered in accordance with Subpart F of Part 107 of Subchapter B of this Chapter; or

(2) A repair facility holding a valid National Board Certificate authorizing the use of the "R" stamp and registered in accordance with Subpart F of Part 107 of Subchapter B of this Chapter.

(b) *Repair and Modification.* (1) A cargo tank may be repaired or modified in accordance with the following:

(i) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired or modified in accordance with the specification requirements in effect at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 406 specification in effect at the time of repair.

(iii) MC 304 and MC 307 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 407 specification in effect at the time of repair;

(iv) MC 310, MC 311, and MC 312 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 412 specification in effect at the time of repair;

(v) MC 338 cargo tanks must be repaired or modified in accordance with the specification requirements in effect at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired or modified as follows:

(A) Repairs must be in accordance with the repair procedures described in CGA Technical Bulletin TB-2 and the National Board Inspection Code—Provisions for Repair of Pressure Vessels. Each cargo tank having cracks and defects requiring welded repairs must meet all of the requirements of § 178.337-16 of this subchapter, except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(B) Modifications must be performed in accordance with the original specification or with the MC 331 specification requirements in effect at the time of repair.

(2) Prior to any repair work or modification the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(3) Any repair or modification of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair or modification of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(4) The suitability of any repair or modification affecting the structural integrity of the cargo tank must be determined by the testing prescribed in the applicable specification.

(5) Each owner of a cargo tank must retain at its principal place of business all records of repairs or modifications made to each tank during the time the tank is in service and for one year thereafter.

(c) *Repair or replacement of piping, valves, hoses or fittings.* In the event of repair or replacement, any piping, valve, or fitting must be tested in accordance with the provisions of the applicable specification before the cargo tank is



returned to hazardous materials service. Piping, valves and fittings must be tested after installation; hoses may be tested either before or after installation on the cargo tank.

(d) *Stretching and rebarrelling.* Stretching or rebarrelling of a cargo tank is authorized if:

(1) All new material and equipment, and equipment affected by the stretching or rebarrelling conforms with the requirements of the specification in effect at the time of such work. Stretching or rebarrelling must be performed as follows:

(i) For Specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks in accordance with Specification DOT 406;

(ii) For Specification MC 304 and MC 307 cargo tanks in accordance with Specification DOT 407;

(iii) For Specification MC 310, MC 311, and MC 312 cargo tanks in accordance with Specification DOT 412;

(iv) For Specification MC 330 cargo tanks in accordance with Specification MC 331.

(2) The person performing the stretching or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's structural integrity, venting, and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety regulations for any newly installed safety equipment;

(iv) Pressure retest each cargo tank in accordance with § 180.407(g);

(v) Change the existing specification plate to reflect the cargo tank as modified, or remove the existing specification plate and attach a new specification plate to the cargo tank;

(vi) On a variable specification cargo tank, install a new variable specification plate.

(3) The design of the rebarrelled or stretched cargo tank must be certified by a design certifying engineer registered in accordance with Subpart F of Part 107. The person performing the stretching or rebarrelling and a Registered Inspector must certify that the rebarrelled or stretched cargo tank has been constructed and tested in accordance with the applicable specification by issuing a new manufacturer's certificate. The registration number of the Registered Inspector must be entered on the certificate.

#### § 180.415 Test and inspection markings.

Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section. Each cargo tank must be durably and legibly marked, in English, with the test date (month and year) followed by the type of test or inspection. The marking must be in letters and numbers at least 1 1/4 inches high, on the front head or the tank shell near the specification plate. The type of test or inspection may be abbreviated as follows: V for external visual inspection and test; I for internal visual inspection; P for pressure retest; L for lining test, K for leakage test; and T for thickness test. For example, the marking "10-85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

#### § 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a cargo tank shall retain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. The owner shall retain the documents throughout his ownership of the cargo tank and for one year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photo copies of these documents for at least one year.

(2) Each motor carrier who uses a specification cargo tank must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized in paragraph (a)(3) (i) or (ii) of this section and retain the documents as specified in this paragraph. A motor carrier who is not the owner of a cargo tank must retain a copy of the vehicle certification report at its principal place of business for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. Upon a written request to, and with the approval of the Regional Director, Office of Motor Carrier Safety, Federal Highway Administration, for the region in which a motor carrier has its principal place of business, a motor carrier may retain the certificate and related papers required by this paragraph at a regional or terminal office. The addresses and jurisdictions of the various regional Motor Carrier Safety Offices are provided in § 390.40 of this title. The provisions of this section do not apply to a motor carrier

leasing a cargo tank for less than 30 days.

(3) *DOT Specification cargo tanks manufactured before December 12, 1989—*

(i) *Non-ASME Code stamped cargo tanks—*If an owner does not have a manufacturer's certificate for a cargo tank and he wishes to certify it as a specification cargo tank, the owner must perform appropriate tests and inspections, under the direct supervision of a Registered Inspector, to determine if the cargo tank conforms with the applicable specification. Both the owner and the Registered Inspector must certify that the cargo tank fully conforms to the applicable specification. The owner must retain the certificate, as specified in this section.

(ii) *ASME Code stamped cargo tanks.* If the owner does not have the manufacturer's certificate and data report required by the specification, the owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the Authorized Inspector must certify that the cargo tank fully conforms to the specification. The owner must retain such documents, as specified in this section.

(b) *Test or inspection reporting.* Each cargo tank which is tested or reinspected as specified in § 180.407 must have a written report, in English, prepared in accordance with this paragraph.

(1) The test or inspection report must include the following:

(i) Type of test or inspection performed and a listing of all items either tested or inspected (a checklist is acceptable);

(ii) Owner's and manufacturer's serial numbers;

(iii) DOT Specification;

(iv) Test Date (Month and year);

(v) Location of defects found and method used to repair each defect;

(vi) Name and address of person performing the test;

(vii) Disposition statement, such as "Cargo tank returned to service" or "Cargo tank withdrawn from service"; and

(viii) Dated signature of inspector and owner.

(2) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor



carrier leasing a cargo tank for less than 30 days.

(c) *Additional requirements for Specification MC 330 and MC 331 cargo tanks.* (1) After completion of the pressure test specified in § 180.407(g)(3), each motor carrier operating a Specification MC 330 or MC 331 cargo tank in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking, must make a written report containing the following information:

(i) Carrier's name, address of principal place of business, and telephone number;

(ii) Complete identification plate data required by Specification MC 330 or MC 331, including data required by ASME Code;

(iii) Carrier's equipment number;

(iv) A statement indicating whether or not the tank was stress relieved after fabrication;

(v) Name and address of the person performing the test and the date of the test;

(vi) a statement of the nature and severity of any defects found. In particular, information must be furnished to indicate the location of

defects detected, such as in weld, heat-affected zone, the liquid phase, the vapor phase, or the head-to-shell seam. If no defect or damage was discovered, that fact must be reported;

(vii) A statement indicating the methods employed to make repairs, who made the repairs, and the date they were completed. Also, a statement of whether or not the tank was stress relieved after repairs and, if so, whether full or local stress relieving was performed;

(viii) A statement of the disposition of the cargo tank, such as "cargo tank scrapped" or "cargo tank returned to service"; and

(ix) A statement of whether or not the cargo tank is used in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking. Also, if the cargo tank has been used in anhydrous ammonia service since the last report, a statement indicating whether each shipment of ammonia was certified by its shipper as containing 0.2 percent water by weight.

(2) A copy of the report must be retained by the carrier at its principal place of business during the period the

tank is in the carrier's service and for one year thereafter. Upon a written request to, and with the approval of, the Director, Regional Office of Motor Carrier Safety, Federal Highway Administration for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

(3) The requirement in paragraph (c)(1) of this section does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(d) *Supplying reports.* Each carrier offering a DOT Specification cargo tank for sale or lease must make available for inspection a copy of the most recent report made under this section to each purchaser or lessee. Copies of such reports must be provided to the purchaser, or the lessee if the cargo tank is leased for more than 30 days.

Issued in Washington, DC on May 23, 1989 under authority delegated in 49 CFR Part 106.

Travis P. Dungan,  
Administrator.

[FR Doc. 89-13086 Filed 6-8-89; 8:45 am]

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# Registered Federal Patent

Monday  
June 12, 1989

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## Part III

### Department of Health and Human Services

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#### Food and Drug Administration

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21 CFR Part 864 et al.

**Medical Devices; Exemptions From  
Premarket Notifications for Certain  
Classified Devices and Withdrawal of  
Proposed Exemptions; Final Rule and  
Proposed Rule**



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

[Docket No. 87N-0005]

## Medical Devices; Exemptions From Premarket Notifications for Certain Classified Devices

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 104 generic types of class I devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public. Elsewhere in this issue of the *Federal Register*, FDA is publishing a withdrawal of a proposed rule to grant an exemption from premarket notification for six other devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

### FOR FURTHER INFORMATION CONTACT:

Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three classes of devices. Each class prescribes the regulatory controls needed to provide reasonable assurance of a device's safety and effectiveness. Class I (general controls), class II (performance standards), and class III (premarket approval) identify the classes set forth in section 513 of the act.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket

notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more complex notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address more pressing regulatory concerns and will make the agency more efficient. The development of these criteria and the issuance of final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal of FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On January 20, 1988 (53 FR 1574), FDA proposed to exempt from premarket notification 110 generic types of class I devices. Interested persons were given until March 21, 1988 to comment.

Two letters of comment were received. Both letters agreed that the devices should be exempt from the premarket notification procedures as proposed. One of the comments suggested that the preamble to the final rule specify exactly the requirements of Subpart E of Part 807 from which the devices are to be exempt. A comment also suggested that Subpart E of Part 807 be amended cross-reference these exemptions.

FDA believes that the preamble to the proposed rule clearly identifies the scope of exemptions for exempt devices. Specifically, the limitations described in the proposed new section, "Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act

(the act)," Subpart A of each of the nine parts of the Code of Federal Regulations involved, and the limitations set forth in the codified language of each generic type of device, fully describe the nature of the exemption from Subpart E of Part 807 for each affected device. FDA believes that it is unnecessary and impractical to cross-reference these exemptions in Subpart E of Part 807.

Accordingly, FDA is adopting 104 of the 110 proposed regulations with minor clarifying changes. However, upon reconsideration, FDA has determined not to grant the proposed exemptions for the following six devices:

### Section No. and Device

866.2660	Microorganism and differentiation and identification device.
868.1910	Esophageal stethoscope.
868.5340	Nasal oxygen cannula.
868.5620	Breathing mouthpiece.
868.5640	Medicinal nonventilatory nebulizer (atomizer).
868.6810	Tracheobronchial suction catheter.

Elsewhere in this issue of the *Federal Register*, FDA is publishing a withdrawal of its proposed rules proposing to grant an exemption from the premarket notification procedures for the six devices listed above. FDA's reasons for withdrawing its six proposals are given in that withdrawal document.

Criteria for 510(k) exemptions: FDA is exempting a generic type of class I device from the requirement of premarket notification, with the limitations described below, if FDA determines that premarket notification is unnecessary for the protection of the public health. FDA is granting an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective



treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendment device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

FDA is now exempting from the requirement of premarket notification, with limitations, the 104 generic types of class I devices below:

CFR Part and Title	Number of devices exempt
864—Hematology and Pathology Devices.....	24
866—Immunology and Microbiology Devices.....	37
868—Anesthesiology Devices.....	13
870—Cardiovascular Devices.....	3
876—Gastroenterology-Urology Devices.....	9
880—General Hospital and Personal Use Devices.....	6
882—Neurological Devices.....	7
884—Obstetrical and Gynecological Devices.....	3
890—Physical Medicine Devices.....	2
Total.....	104

#### Reference

The following information has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

#### Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under the final rule, the devices remain subject to such controls, other than premarket notification.

#### List of Subjects

##### 21 CFR Part 864

Blood, Hematology and pathology devices, Medical devices, Packaging and containers.

##### 21 CFR Part 866

Biologics, Immunology and microbiology devices, Laboratories, Medical devices.

##### 21 CFR Part 868

Anesthesiology devices, Medical devices.

##### 21 CFR Part 870

Cardiovascular devices, Medical devices.

##### 21 CFR Part 876

Gastroenterology-urology devices, Medical devices.

##### 21 CFR Part 880

General hospital and personal use devices, Medical devices.

##### 21 CFR Part 882

Medical devices, Neurological devices.

##### 21 CFR Part 884

Medical devices, Obstetrical and gynecological devices.

##### 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890 are amended as follows:

#### PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 864.9 is added to Subpart A to read as follows:

##### § 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of



commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 864.1850 is amended by revising paragraph (b) to read as follows:

**§ 864.1850 Dye and chemical solution stains.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807. The devices are also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. Section 864.2220 is amended by revising paragraph (b) to read as follows:

**§ 864.2220 Synthetic cell and tissue culture media and components.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

5. Section 864.2240 is amended by revising paragraph (b) to read as follows:

**§ 864.2240 Cell and tissue culture supplies and equipment.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the devices are not labeled or otherwise represented as sterile, they are exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. Section 864.2260 is amended by revising paragraph (b) to read as follows:

**§ 864.2260 Chromosome culture kit.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

7. Section 864.2360 is amended by revising paragraph (b) to read as follows:

**§ 864.2360 Mycoplasma detection media and components.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

8. Section 864.2800 is amended by revising paragraph (b) to read as follows:

**§ 864.2800 Animal and human sera.**

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

9. Section 864.2875 is amended by revising paragraph (b) to read as follows:

**§ 864.2875 Balanced salt solutions or formulations.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

10. Section 864.3010 is amended by revising paragraph (b) to read as follows:

**§ 864.3010 Tissue processing equipment.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in

Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. Section 864.3250 is amended by revising paragraph (b) to read as follows:

**§ 864.3250 Specimen transport and storage container.**

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

12. Section 864.3300 is amended by revising paragraph (b) to read as follows:

**§ 864.3300 Cytocentrifuge.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

13. Section 864.3400 is amended by revising paragraph (b) to read as follows:

**§ 864.3400 Device for sealing microsections.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

14. Section 864.3600 is amended by revising paragraph (b) to read as follows:

**§ 864.3600 Microscopes and accessories.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The devices are also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. Section 864.3800 is amended by revising paragraph (b) to read as follows:

**§ 864.3800 Automated slide stainer.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.



16. Section 864.3875 is amended by revising paragraph (b) to read as follows:

**§ 864.3875 Automated tissue processor.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

17. Section 864.4010 is amended by revising paragraph (b) to read as follows:

**§ 864.4010 General purpose reagent.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. Section 864.4400 is amended by revising paragraph (b) to read as follows:

**§ 864.4400 Enzyme preparations.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

19. Section 864.5800 is amended by revising paragraph (b) to read as follows:

**§ 864.5800 Automated sedimentation rate device.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

20. Section 864.5850 is amended by revising paragraph (b) to read as follows:

**§ 864.5850 Automated slide spinner.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

21. Section 864.6150 is amended by revising paragraph (b) to read as follows:

**§ 864.6150 Capillary blood collection tube.**

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification

procedures in Subpart E of Part 807 of this chapter.

22. Section 864.6160 is amended by revising paragraph (b) to read as follows:

**§ 864.6160 Manual blood cell counting device.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

23. Section 864.6600 is amended by revising paragraph (b) to read as follows:

**§ 864.6600 Osmotic fragility test.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

24. Section 864.6700 is amended by revising paragraph (b) to read as follows:

**§ 864.6700 Erythrocyte sedimentation rate test.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

25. Section 864.8200 is amended by revising paragraph (b) to read as follows:

**§ 864.8200 Blood cell diluent.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

26. Section 864.8540 is amended by revising paragraph (b) to read as follows:

**§ 864.8540 Red cell lysing reagent.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

**PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES**

27. The authority citation for 21 CFR Part 866 continues to read as follows:

Authority: Secs. 501 (f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

28. New § 866.9 is added to Subpart A to read as follows:

**§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendment device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976 e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

29. Section 866.2050 is amended by revising paragraph (b) to read as follows:

**§ 866.2050 Staphylococcal typing bacteriophage.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

30. Section 866.2170 is amended by revising paragraph (b) to read as follows:

**§ 866.2170 Automated colony counter.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.



31. Section 866.2300 is amended by revising paragraph (b) to read as follows:

**§ 866.2300 Multipurpose culture medium.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

32. Section 866.2320 is amended by revising paragraph (b) to read as follows:

**§ 866.2320 Differential culture medium.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

33. Section 866.2330 is amended by revising paragraph (b) to read as follows:

**§ 866.2330 Enriched culture medium.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

34. Section 866.2350 is amended by revising paragraph (b) to read as follows:

**§ 866.2350 Microbiological assay culture medium.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

35. Section 866.2360 is amended by revising paragraph (b) to read as follows:

**§ 866.2360 Selective culture medium.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

36. Section 866.2450 is amended by revising paragraph (b) to read as follows:

**§ 866.2450 Supplement for culture media.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

37. Section 866.2480 is amended by revising paragraph (b) to read as follows:

**§ 866.2480 Quality control kit for culture media.**

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in Subpart E of Part 807 of this chapter.

38. Section 866.2500 is amended by revising paragraph (b) to read as follows:

**§ 866.2500 Microtiter diluting and dispensing device.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

39. Section 866.2560 is amended by revising paragraph (b) to read as follows:

**§ 866.2560 Microbial growth monitor.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

40. Section 866.2580 is amended by revising paragraph (b) to read as follows:

**§ 866.2580 Gas-generating device.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

41. Section 866.3010 is amended by revising paragraph (b) to read as follows:

**§ 866.3010 Acinetobacter calcoaceticus serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

42. Section 866.3020 is amended by revising paragraph (b) to read as follows:

**§ 866.3020 Adenovirus serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

43. Section 866.3035 is amended by revising paragraph (b) to read as follows:

**§ 866.3035 Arizona spp. serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

44. Section 866.3065 is amended by revising paragraph (b) to read as follows:

**§ 866.3065 Bordetella spp. serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

45. Section 866.3125 is amended by revising paragraph (b) to read as follows:

**§ 866.3125 Citrobacter spp. serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

46. Section 866.3205 is amended by revising paragraph (b) to read as follows:

**§ 866.3205 Echovirus serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

47. Section 866.3250 is amended by revising paragraph (b) to read as follows:

**§ 866.3250 Erysipelothrix rhusiopathiae serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

48. Section 866.3255 is amended by revising paragraph (b) to read as follows:

**§ 866.3255 Escherichia coli serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

49. Section 866.3270 is amended by revising paragraph (b) to read as follows:

**§ 866.3270 Flavobacterium spp. serological reagents.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

50. Section 866.3330 is amended by revising paragraph (b) to read as follows:



**§ 866.3330 Influenza virus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

51. Section 866.3340 is amended by revising paragraph (b) to read as follows:

**§ 866.3340 Klebsiella spp. serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

52. Section 866.3400 is amended by revising paragraph (b) to read as follows:

**§ 866.3400 Parainfluenza virus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

53. Section 866.3410 is amended by revising paragraph (b) to read as follows:

**§ 866.3410 Proteus spp. (Well-Felix) serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

54. Section 866.3470 is amended by revising paragraph (b) to read as follows:

**§ 866.3470 Reovirus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from premarket notification procedures in Subpart E of Part 807 of this chapter.

55. Section 866.3490 is amended by revising paragraph (b) to read as follows:

**§ 866.3490 Rhinovirus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

56. Section 866.3520 is amended by revising paragraph (b) to read as follows:

**§ 866.3520 Rubella (measles) virus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

57. Section 866.3630 is amended by revising paragraph (b) to read as follows:

**§ 866.3630 Serratia spp. serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

58. Section 866.3700 is amended by revising paragraph (b) to read as follows:

**§ 866.3700 Staphylococcus aureus serological reagents.**  
\* \* \*

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

59. Section 866.4500 is amended by revising paragraph (b) to read as follows:

**§ 866.4500 Immuno-electrophoresis equipment.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

60. Section 866.4520 is amended by revising paragraph (b) to read as follows:

**§ 866.4520 Immunofluorometer equipment.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

61. Section 866.4540 is amended by revising paragraph (b) to read as follows:

**§ 866.4540 Immunonephelometer equipment.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

62. Section 866.4600 is amended by revising paragraph (b) to read as follows:

**§ 866.4600 Ouchterlony agar plate.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

63. Section 866.4830 is amended by revising paragraph (b) to read as follows:

**§ 866.4830 Rocket immunoelectrophoresis equipment.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

64. Section 866.4900 is amended by revising paragraph (b) to read as follows:

**§ 866.4900 Support gel.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

65. Section 866.5800 is amended by revising paragraph (b) to read as follows:

**§ 866.5800 Seminal fluid (sperm) immunological test system.**  
\* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

## PART 868—ANESTHESIOLOGY DEVICES

66. The authority citation for 21 CFR Part 868 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

67. New § 868.9 is added to Subpart A to read as follows:

**§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into



interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

68. Section 868.1030 is amended by revising paragraph (b) to read as follows:

**§ 868.1030 Manual algometer.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

69. Section 868.1930 is amended by revising paragraph (b) to read as follows:

**§ 868.1930 Stethoscope head.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

70. Section 868.1965 is amended by revising paragraph (b) to read as follows:

**§ 868.1965 Switching valve (ploss).**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

71. Section 868.5220 is amended by revising paragraph (b) to read as follows:

**§ 868.5220 Blow bottle.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

72. Section 868.5280 is amended by revising paragraph (b) to read as follows:

**§ 868.5280 Breathing tube support.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

73. Section 868.5365 is amended by revising paragraph (b) to read as follows:

**§ 868.5365 Posture chair for cardiac or pulmonary treatment.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

74. Section 868.5420 is amended by revising paragraph (b) to read as follows:

**§ 868.5420 Ether hook.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

75. Section 868.5560 is amended by revising paragraph (b) to read as follows:

**§ 868.5560 Gas mask head strap.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

76. Section 868.5760 is amended by revising paragraph (b) to read as follows:

**§ 868.5760 Cuff spreader.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

77. Section 868.6100 is amended by revising paragraph (b) to read as follows:

**§ 868.6100 Anesthetic cabinet, table, or tray.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

78. Section 868.6175 is amended by revising paragraph (b) to read as follows:

**§ 868.6175 Cardiopulmonary emergency cart.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

79. Section 868.6225 is amended by revising paragraph (b) to read as follows:

**§ 868.6225 Nose clip.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

80. Section 868.6700 is amended by revising paragraph (b) to read as follows:



**§ 868.6700 Anesthesia stool.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

**PART 870—CARDIOVASCULAR DEVICES**

81. The authority citation for 21 CFR Part 870 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

82. New § 870.9 is added to Subpart A to read as follows:

**§ 870.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

83. Section 870.3730 is amended by revising paragraph (b) to read as follows:

**§ 870.3730 Pacemaker service tools.**

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures of Subpart E of Part 807 of this chapter.

84. Section 870.4200 is amended by revising paragraph (b) to read as follows:

**§ 870.4200 Cardiopulmonary bypass accessory equipment.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

85. Section 870.4500 is amended by revising paragraph (b) to read as follows:

**§ 870.4500 Cardiovascular surgical instruments.**

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

**PART 876—GASTROENTEROLOGY-UROLOGY DEVICES**

86. The authority citation for 21 CFR Part 876 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

87. New § 876.9 is added to Subpart A to read as follows:

**§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

88. Section 876.4370 is amended by revising paragraph (b)(2) to read as follows:

**§ 876.4370 Gastroenterology-urology evacuator.**

(2) Class I for the gastroenterology-urology evacuator when manually powered. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

89. Section 876.4530 is amended by revising paragraph (b) to read as follows:

**§ 876.4530 Gastroenterology-urology fiberoptic retractor.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

90. Section 876.4560 is amended by revising paragraph (b) to read as follows:

**§ 876.4560 Ribdam.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

91. Section 876.4730 is amended by revising paragraph (b) to read as follows:

**§ 876.4730 Manual gastroenterology-urology surgical instrument and accessories.**

(b) *Classification.* Class I. The device is exempt from the premarket



notification procedures in Subpart E of Part 807 of this chapter.

92. Section 876.4890 is amended by revising paragraph (b)(2) to read as follows:

**§ 876.4890 Urological table and accessories.**

\* \* \* \* \*

(b) \* \* \*

(2) Class I for the manually powered table and accessories. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

93. Section 876.5030 is amended by revising paragraph (b) to read as follows:

**§ 876.5030 Continent ileostomy catheter.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

94. Section 876.5820 is amended by revising paragraph (b)(2) to read as follows:

**§ 876.5820 Hemodialysis system and accessories.**

\* \* \* \* \*

(b) \* \* \*

(2) Class I for other accessories of the hemodialysis system remote from the extracorporeal blood system and the dialysate delivery system, such as the unpowered dialysis chair, hemodialysis start/stop tray, dialyzer holder set, and dialysis tie gun and ties. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

95. Section 876.5900 is amended by revising paragraph (b) to read as follows:

**§ 876.5900 Ostomy pouch and accessories.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

95a. Section 876.5920 is amended by revising paragraph (b) to read as follows:

**§ 876.5920 Protective garment for incontinence.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in

Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

**PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES**

96. The authority citation for 21 CFR Part 880 continues to read as follows:

*Authority:* Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

97. New § 880.9 is added to Subpart A to read as follows:

**§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

98. Section 880.5110 is amended by revising paragraph (b) to read as follows:

**§ 880.5110 Hydraulic adjustable hospital bed.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

99. Section 880.5120 is amended by revising paragraph (b) to read as follows:

**§ 880.5120 Manual adjustable hospital bed.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

100. Section 880.5510 is amended by revising paragraph (b) to read as follows:

**§ 880.5510 Non-AC-powered patient lifts.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

101. Section 880.6150 is amended by revising paragraph (b) to read as follows:

**§ 880.6150 Ultrasonic cleaner for medical instruments.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter, except that any solutions intended for use with the device for cleaning or sanitizing the instruments are not exempt.

102. Section 880.6280 is amended by revising paragraph (b) to read as follows:

**§ 880.6280 Medical insole.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

103. Section 880.6970 is amended by revising paragraph (b) to read as follows:

**§ 880.6970 Liquid crystal vein locator.**

\* \* \* \* \*

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.



**PART 882—NEUROLOGICAL DEVICES**

104. The authority citation for 21 CFR Part 882 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

105. New § 882.9 is added to Subpart A to read as follows:

**§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

106. Section 882.1200 is amended by revising paragraph (b) to read as follows:

**§ 882.1200 Two-point discriminator.**

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before

May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

107. Section 882.1500 is amended by revising paragraph (b) to read as follows:

**§ 882.1500 Esthesiometer.**

(b) *Classification.* Class I. If the device is composed entirely of a single material, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

108. Section 882.1525 is amended by revising paragraph (b) to read as follows:

**§ 882.1525 Tuning fork.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

109. Section 882.1700 is amended by revising paragraph (b) to read as follows:

**§ 882.1700 Percussor.**

(b) *Classification.* Class I. If the device is a small, hand-held hammer with a rubber head, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

110. Section 882.1750 is amended by revising paragraph (b) to read as follows:

**§ 882.1750 Pinwheel.**

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, and it is manually operated, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

111. Section 882.4215 is amended by revising paragraph (b) to read as follows:

**§ 882.4215 Clip rack.**

(b) *Classification.* Class I. If the device is composed entirely of a single metal alloy having the same composition as the clips it is intended to hold, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

112. Section 882.4650 is amended by revising paragraph (b) to read as follows:

**§ 882.4650 Neurosurgical suture needle.**

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

**PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES**

113. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

114. New § 884.9 is added to Subpart A to read as follows:

**§ 884.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing



or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

115. Section 884.2900 is amended by revising paragraph (b) to read as follows:

**§ 884.2900 Fetal stethoscope.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

116. Section 884.4520 is amended by revising paragraph (b) to read as follows:

**§ 884.4520 Obstetric-gynecologic general manual instrument.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

117. Section 884.5920 is amended by revising paragraph (b) to read as follows:

**§ 884.5920 Vaginal insufflator.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

**PART 890—PHYSICAL MEDICINE DEVICES**

118. The authority citation for 21 CFR Part 890 continues to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

119. New § 890.9 is added to Subpart A to read as follows:

**§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

120. Section 890.3700 is amended by revising paragraph (b) to read as follows:

**§ 890.3700 Nonpowered communication system.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

121. Section 890.5125 is amended by revising paragraph (b) to read as follows:

**§ 890.5125 Nonpowered sitz bath.**

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-13802 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M



**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Parts 866 and 868**

[Docket No. 87N-0005]

**Medical Devices; Withdrawal of Proposed Exemptions****AGENCY:** Food and Drug Administration.**ACTION:** Withdrawal of proposed exemptions.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing proposals to exempt six generic types of devices from the requirement of premarket notification. Elsewhere in this issue of the *Federal Register*, FDA is publishing a final rule exempting from the requirement of premarket notification, with limitations, 104 generic types of class I devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** The Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), established three classes of devices. Each class prescribes the regulatory controls needed to provide reasonable assurance

of a device's safety and effectiveness. Class I (general controls), class II (performance standards), and class III (premarket approval) are the identification of each class set forth in section 513 of the act.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panel included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more complex notifications. The development of these criteria and the issuance of final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal of FDA's July 1985 "A Plan for Action" (Ref. 1).

On January 20, 1988 (53 FR 1574), FDA proposed to exempt from premarket notification 110 generic types of class I devices. Based upon that proposed rule, FDA is exempting 104 devices from such

requirements, with limitations. Upon reconsideration, FDA is withdrawing its proposals to exempt the six devices identified below because the agency has determined that the devices do not meet the criteria provided in the preamble for granting such exemptions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)) and under 21 CFR 5.10, the proposed rule published in the *Federal Register* of January 20, 1988, is withdrawn with respect to the following six devices:

- Proposed § 866.2660 Microorganism differentiation and identification device.
- Proposed § 868.1910 Esophageal stethoscope.
- Proposed § 868.5340 Nasal oxygen cannula.
- Proposed § 868.5620 Breathing mouthpiece.
- Proposed § 868.5640 Medicinal nonventilatory nebulizer (atomizer).
- Proposed § 868.6810 Tracheobronchial suction catheter.

**Reference**

The following reference has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Dated: February 22, 1989.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 89-13801 Filed 6-9-89; 8:45 am]

**BILLING CODE 4160-01-M**



STATEMENT OF THE  
COMMISSIONER OF THE  
LAND OFFICE

IN RESPONSE TO A RESOLUTION  
PASSED BY THE HOUSE OF  
REPRESENTATIVES

AT THE SESSION OF 1890

IN THE HOUSE OF REPRESENTATIVES

AT THE CITY OF WASHINGTON

IN THE YEAR OF OUR LORD 1890

AND OF OUR INDEPENDENCE

THE FIFTY-THIRD YEAR

OF THE UNION

AND OF THE REIGN

OF OUR SOVERAIN

AND OF OUR CONSTITUTION

AND OF OUR LAWS

AND OF OUR JUDGES

AND OF OUR OFFICERS

AND OF OUR SOLDIERS

AND OF OUR NAVY

AND OF OUR AIR FORCE

AND OF OUR MARSHES

AND OF OUR RIVERS

AND OF OUR LAKES

AND OF OUR MOUNTAINS

AND OF OUR PLAINS

AND OF OUR COASTS

AND OF OUR ISLANDS

AND OF OUR ARCHES

AND OF OUR TOWERS

AND OF OUR SPACES

AND OF OUR TIMES

AND OF OUR PLACES

AND OF OUR PEOPLE



# Registered Reporter

Monday  
June 12, 1989

## Part IV

### Environmental Protection Agency

**Draft Guidance to Hazardous Waste  
Generators on the Elements of a Waste  
Minimization Program; Notice and  
Request for Comment**



# ENVIRONMENTAL PROTECTION AGENCY

[OSWER-FR-3421-1]

## Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Draft guidance and request for comment.

**SUMMARY:** Comments are being solicited on the following document, entitled *Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program*. This guidance was developed to assist hazardous waste generators in complying with the certification requirements of sections 3002(b) and 3005(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), which became effective on September 1, 1985.

An effective waste minimization program as viewed by the Agency should have the following basic elements: (1) Top Management Support; (2) Characterization of Waste Generation; (3) Periodic Waste Minimization Assessments; (4) A Cost Allocation System; (5) Encouragement of Technology Transfer, and (6) Program Evaluation. While these elements provide guidance to generators on how a minimization program for hazardous waste may be structured, the Agency believes that they are equally valid for the design of a multi-media source reduction and recycling program. This guidance is consistent with EPA's belief that facilities should have broad pollution prevention programs with the goal of preventing or reducing wastes, substances, discharges and/or emissions to all environmental media—air, land, surface water and ground water.

**Related Action:** EPA published in the *Federal Register*, on January 26, 1989 (54 FR 3845), a proposed policy statement on source reduction and recycling. This policy commits the Agency to a preventive strategy to reduce or eliminate the generation of environmentally-harmful pollutants which may be released to the air, land, surface water or ground water. It further proposes to incorporate this preventive strategy into EPA's overall mission to protect human health and the environment by making source reduction a priority for every aspect of Agency decision-making and planning, with environmentally-sound recycling as

a second priority over treatment and disposal. Today's draft guidance is an example of the application of this policy in the RCRA program for hazardous waste.

**DATES:** EPA urges interested parties to comment on this draft notice in writing. The deadline for submitting written comments is September 11, 1989.

**ADDRESSES:** All comments must be submitted (original and two copies) to: EPA RCRA Docket (room SE-201) (mail code OS-305), 401 "M" Street, SW., Washington, DC 20460. Place the docket number, # F-88-WMPP-FFFFF, on your comments.

**FOR FURTHER INFORMATION, CONTACT:** James Lounsbury, Office of Solid Waste, (202) 382-4807, or the RCRA Hotline (800-424-9346).

## Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

### I. Purpose

The purpose of today's notice is to provide non-binding guidance to generators of regulated hazardous wastes on what constitutes a "program in place" to comply with the certification requirements of sections 3002(b) and 3005(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Such certifications require generators to implement programs to reduce the volume and toxicity of hazardous wastes generated to the extent economically practicable. This guidance is intended to fulfill a commitment made by EPA in its 1986 report to Congress entitled, *Minimization of Hazardous Waste*.<sup>1</sup>

### II. Background

With the passage of HSWA, Congress established a national policy declaring the importance of reducing or eliminating the generation of hazardous waste. Specifically, section 1003(b) states:

The Congress hereby declares it to be a national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize present and future threat to human health and the environment.

In this declaration, Congress established a clear priority for reducing or eliminating the generation of

hazardous wastes (a concept referred to as waste minimization) over managing wastes that were "nevertheless" generated.

EPA believes that hazardous waste minimization means the reduction, to the extent feasible, of hazardous waste that is generated prior to treatment, storage or disposal of the waste. It is defined as any source reduction or recycling activity that results in either: (1) Reduction of total volume of hazardous waste; (2) reduction of toxicity of hazardous waste; or (3) both, as long as that reduction is consistent with the general goal of minimizing present and future threats to human health and the environment.<sup>2</sup>

Waste minimization can result in significant benefits for industry. EPA believes an effective waste minimization program will contribute to:

(1) Minimizing quantities of regulated hazardous waste generated, thereby reducing waste management and compliance costs;

(2) Improving product yields;

(3) Reducing or eliminating inventories and releases of "hazardous chemicals" reportable under Title III of the Superfund Amendments and Reauthorization Act; and/or

(4) Lowering Superfund, corrective action and toxic tort liabilities.

Besides establishing the national policy, Congress also enacted several provisions in HSWA for implementing hazardous waste minimization. These included a generator certification on hazardous waste manifests and permits for treatment, storage, or disposal of hazardous waste. RCRA 3002(b). These certifications (effective September 1, 1985) require generators certify two conditions: That (1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and (2) the proposed method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes the present and future

<sup>2</sup> Hazardous waste minimization involves volume or toxicity reduction through either a source reduction or recycling technique and results in the reduction of risks to human health and the environment. The transfer of hazardous constituents from one environmental medium to another does not constitute waste minimization. Neither would concentration conducted solely for reducing volume unless, for example, concentration of the waste allowed for recovery of useful constituents prior to treatment and disposal. Likewise, dilution as a means of toxicity reduction would not be considered waste minimization, unless later recycling steps were involved.

<sup>1</sup> 51 FR 44683 (12/11/86), Notice of Availability of the report to Congress.



threat to human health and the environment.

In addition, Congress also added a new provision in 1984 that requires hazardous waste generators to identify in their biennial reports to EPA (or the State): (1) The efforts undertaken during the year to reduce the volume and toxicity of waste generated; and (2) the changes in volume and toxicity actually achieved in comparison with previous years, to the extent such information is available prior to 1984 (RCRA 3002 (a)(6)).

Today's notice provides non-binding guidance to hazardous waste generators in response to the certification requirements in HSWA. Specifically, it addresses the first of the certification conditions that states that, "the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined to be economically practicable."

EPA is not, however, providing guidance on the determination of the phrase "economically practicable". As Congress indicated in its accompanying report to HSWA<sup>3</sup> the term "economically practicable" is to be defined and determined by the generator and is not subject to subsequent re-evaluation by EPA. The generator of the hazardous waste, for purposes of this certification, has the flexibility to determine what is economically practicable for the generator's circumstances. Whether this determination is made for all of its operations or on a site-specific basis is for the generator to decide.

EPA has received numerous inquiries on what constitutes a waste minimization program. In today's notice EPA is providing draft guidance to hazardous waste generators on what the Agency believes are the basic elements of a waste minimization program.

EPA believes that today's guidance may provide direction to large quantity and small quantity generators in fulfilling their manifest certification requirement. Small quantity generators, while not subject to the same "program in place" certification requirement as large quantity generators, have to certify that they have "made a good faith effort to minimize" their waste generation.

The elements discussed here reflect the results of agency analyses conducted over the last several years

and extensive interaction with private and public sector waste minimization program managers. EPA believes that an effective waste minimization program should include each of the general elements discussed below, although EPA realizes that some of these elements may be implemented in different ways depending on the preferences of individual firms.

**A. Top Management Support.** Top management should ensure that waste minimization is a company-wide effort. There are many ways to accomplish this goal. Some of the methods described below may be suitable for some firms and not others. However, some combination of these techniques should be used by every firm to demonstrate top management support.

—Make waste minimization a company policy. Put this policy in writing and distribute it to all departments. Make it each person's responsibility to identify opportunities for minimizing waste. Reinforce the policy in day-to-day operations, at meetings and other company functions.

—Set specific goals for reducing the volume or toxicity of waste streams.

—Commit to implementing recommendations identified through assessments, evaluations or other means.

—Designate a waste minimization coordinator at each facility to ensure effective implementation of the program.

—Publicize success stories. It will trigger additional ideas.

—Reward employees that identify cost-effective waste minimization opportunities.

—Train employees on aspects of waste minimization that relate to their job. Include all departments, such as those in product design, capital planning, production operations, and maintenance.

**B. Characterization of Waste Generation.** Maintain a waste accounting system to track the types, amounts and hazardous constituents of wastes and the dates they are generated.

**C. Periodic Waste Minimization Assessments.** Track materials that eventually wind up as waste, from the loading dock to the point at which they become a waste.

—Identify opportunities at all points in a process where materials can be prevented from becoming a waste (for example, by using less material, recycling materials in the process,

finding substitutes, or making equipment changes). Individual processes or facilities should be reviewed periodically. Larger companies may find it useful to establish a team of independent experts.

—Determine the true costs of the waste. Calculate the costs of the materials found in the waste stream based on the purchase price of those materials. Calculate the cost of managing the wastes that are generated, including costs for personnel, recordkeeping, transportation, liability insurance, pollution control equipment, treatment and disposal and others.

**D. A cost allocation system.** Departments and managers should be charged "fully-loaded" waste management costs for the wastes they generate, factoring in liability, compliance and oversight costs.

**E. Encourage Technology Transfer.** Seek or exchange technical information on waste minimization from other parts of your company, from other firms, trade associations, State and university technical assistance programs or professional consultants. Many techniques have been evaluated and documented that may be useful in your facility.

**F. Program Evaluation.** Conduct a periodic review of program effectiveness. Use these reviews to provide feedback and identify potential areas for improvement.

Although waste minimization practices have demonstrated their usefulness and benefits to those generators that have implemented such programs, many others still have not practiced waste minimization. Today's guidance on effective waste minimization practices may help encourage regulated entities to investigate waste minimization alternatives, implement new programs, or upgrade existing programs. Although the approaches described above are directed toward minimizing hazardous solid waste, they are equally valid for design of multi-media source reduction and recycling programs.

EPA requests comments on all aspects of this guidance.

Date: June 2, 1989.

William K. Reilly,  
Administrator.

[FR Doc. 89-13845 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

<sup>3</sup> S. Rep. No. 98-284, 98th Cong., 1st Sess. (1983)



the American Medical Association has been a constant factor in the development of the medical profession in this country. It has been the voice of the physician, the defender of his rights, and the promoter of his interests. It has been the center of the medical community, the place where the physician has found his colleagues, his friends, and his support. It has been the place where the physician has found the strength to face the challenges of his profession, the strength to stand up for his principles, and the strength to fight for the betterment of his patients. It has been the place where the physician has found the courage to speak the truth, the courage to stand up to the powers that be, and the courage to fight for the rights of his patients. It has been the place where the physician has found the wisdom to listen to the needs of his patients, the wisdom to understand the problems of his patients, and the wisdom to provide the best possible care for his patients. It has been the place where the physician has found the love to care for his patients, the love to comfort his patients, and the love to heal his patients. It has been the place where the physician has found the hope to believe in the future, the hope to believe in the progress of medicine, and the hope to believe in the betterment of the human race. It has been the place where the physician has found the faith to believe in the power of medicine, the faith to believe in the power of the physician, and the faith to believe in the power of the American Medical Association. It has been the place where the physician has found the strength, the courage, the wisdom, the love, the hope, and the faith to face the challenges of his profession, to stand up for his principles, to fight for the betterment of his patients, to care for his patients, to believe in the future, to believe in the progress of medicine, to believe in the betterment of the human race, to believe in the power of medicine, to believe in the power of the physician, and to believe in the power of the American Medical Association.

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# **Federal Register**

**Monday  
June 12, 1989**

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## **Part V**

### **Department of Defense General Services Administration**

### **National Aeronautics and Space Administration**

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**48 CFR Parts 1, 5, 19, 27, 45, and 52  
Federal Acquisition Regulation (FAR);  
Miscellaneous Amendments**



## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

48 CFR Parts 1, 5, 19, 27, 45, and 52

[Federal Acquisition Circular 84-48]

RIN 9000-AC85, 9000-AC82, 9000-AC73

Federal Acquisition Regulation (FAR);  
Miscellaneous Amendments

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rules with request for comments, and final rules.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-48 amends the Federal Acquisition Regulation (FAR) with respect to the following: Blind and Handicapped Organizations; Nonmanufacturers Rule; Small Business Directors' Responsibilities; Breakout Appeals; Commerce Patent Regulations; Commerce Business Daily Numbered Notes; Facsimile Numbers in Synopses; Synopsis Classification Codes; and Physical Inventories.

**DATES:** *Effective Dates:* June 12, 1989, for Parts 1, 19, 27, and the relevant clauses in Part 52 (Items I thru V) and July 12, 1989, for Parts 5 and 45 (Items VI thru IX).

*Comment date:* Comments on the interim rules (Items I, II, and V) should be submitted to the FAR Secretariat at the address shown below on or before August 11, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-48, and the appropriate FAC Item Number, in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-48.

## SUPPLEMENTARY INFORMATION:

## A. Determination To Issue Interim Regulations

FAC 84-48, Items I, II, and V. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General

Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Items I, II, and V, FAC 84-48, as interim rules.

*Item I.* This action is necessary to implement in the FAR section 133 of Pub. L. 100-590.

*Item II.* This action is necessary to implement in the FAR section 303(h) of Pub. L. 100-656 which amended section 8(a) of the Small Business Act.

*Item V.* This action is necessary to implement in the FAR the contractual requirements of the Department of Commerce (DOC) final rule, pursuant to Pub. L. 98-620.

However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating each final rule.

## B. Background

FAC 84-48, Item II. Revisions to 19.102, 19.502-2, and associated clauses implement section 303(h) of Pub. L. 100-656, which amended section 8(a) of the Small Business Act to permit regular dealers to offer any domestically produced product for any class of products for which the Small Business Administration determines that there are no small business manufacturers.

FAC 84-48, Item IV. Revisions to 19.403 and 19.505 implement section 110 of the SBA Reauthorization Act of 1988 (Pub. L. 100-590). Revisions in 19.403 expand the type of technical data and procurement records that will be made available to the SBA breakout procurement center representative, and provide for appeals of unfavorable procurement center decisions subject to the procedures in 19.505. Section title 19.505 is also revised to reflect its broader application.

FAC 84-48, Item V. The DOC published a final rule in the Federal Register on March 18, 1987 (52 FR 8552), implementing Pub. L. 98-620 that shifts the authority to issue regulations under Chapter 18 of Title 35, United States Code (Rights in Inventions Made with Federal Assistance), from the Office of Federal Procurement Policy to the DOC. This rule implements in the Federal Acquisition Regulation the contractual aspects of the DOC rule.

## C. Regulatory Flexibility Act

FAC 84-48, Item I. This interim rule implements section 133 of Pub. L. 100-590, the Small Business Reauthorization and Amendment Act, to permit organizations for the handicapped to participate in small business set-asides for fiscal years 1989 through 1993.

Impact on small entities is unknown at this time. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is on file in the FAR Secretariat. The IRFA will be submitted to the Chief Counsel for Advocacy, Small Business Administration. However, publication of this rule as an interim rule will afford the public the opportunity to make comments with respect to this rule's economic impact on small entities, and such comments will be considered in the formation of the final rule. Such comments must be submitted separately and cite 89-610 (FAC 84-48, Item I).

FAC 84-48, Item V. This interim rule will not have a significant effect beyond the internal operating procedures of procuring agencies, or a significant cost or administrative impact on contractors or offerors independent from the impact of the final rule prescribed by DOC in the Federal Register on March 18, 1987 (52 FR 8552). Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 (FAC 84-48, Item V).

FAC 84-48, Items II, III, IV, VI, VII, VIII, and IX. DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

## D. Paperwork Reduction Act

FAC 84-48, Items I, II, III, IV, VI, VII, VIII, and IX. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-48, Item V. The information collection requirements contained in this interim rule were approved by the Office of Management and Budget and have been assigned OMB Control Number 9000-0095.

List of Subjects in 48 CFR Parts 1, 5, 19, 27, 45, and 52

Government procurement.



Dated: June 7, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

# Federal Acquisition Circular

[Number 84-48]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-48 is effective:

Items I through V June 12, 1989, for Parts 1, 19, 27, and the relevant clauses in Part 52; and

Items VI through IX June 12, 1989, Parts 5 and 45.

Harry S. Rosinski,

Acting Associate Administrator for Acquisition Policy, GSA.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

[Number 84-48]

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-48 amends the Federal Acquisition Regulation (FAR) as specified below:

## Item I—Blind and Handicapped Organizations

FAR 19.501, 19.508 are revised and the clause at 52.219-15 is added to authorize participation of public or private organizations for the handicapped in small business set-asides during fiscal years 1989 through 1993. The revisions provide for self-certification by handicapped organizations, but provide for challenge of the certification by interested parties. The revisions also provide notice that small business concerns which experience severe economic injury as a result of a set-aside award to a handicapped organization may file an appeal with the Small Business Administration.

## Item II—Nonmanufacturers Rule

FAR 19.102, 19.502-2, and the clauses at 52.219-5, 52.219-6, and 52.219-7 are revised to permit small business regular dealers to offer any domestically produced or manufactured product under a small business set-aside or award under section 8(a) of the Small Business Act when the acquisition is for a product in a class of which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market.

## Item III—Small Business Director's Responsibilities

FAR 19.201 and 19.202 are revised to implement section 603, Pub. L. 100-656 and section 12, Pub. L. 100-496.

## Item IV—Breakout Appeals

FAR 19.403 and 19.505 are revised to implement section 110 of the SBA Reauthorization Act of 1988 (Pub. L. 100-590).

## Item V—Commerce Patent Regulation, Pub. L. 98-620

FAR 1.105, Subpart 27.3, and the clauses at 52.227-11, 52.227-12, and 52.227-13 are revised to implement the contractual aspects of a final rule issued by the Department of Commerce on March 18, 1987 (52 FR 8552).

## Item VI—Commerce Business Daily Numbered Notes

FAR 5.205(c)(1), 5.206, 5.207(b)(6) #17, 5.207(d), 5.207 (e)(1) and (e)(3) are revised to accommodate the updated Commerce Business Daily Numbered Notes, and to establish a system to review and revise Numbered Notes.

## Item VII—Facsimile Numbers in Synopses

FAR 5.207(c)(2)(xv) is revised to provide for the insertion of machine numbers and routing instructions in synopsis Item 17, if the contracting office will accept requests for solicitations through alternate means.

## Item VIII—Synopsis Classification Codes

FAR 5.207(b)(4) #6, 5.207 (g)(1) and (g)(2) are revised to clarify that only one classification code shall be included in synopses submitted to the Commerce Business Daily (CBD) and further, that failure to include a classification code or submission of more than one code, will result in rejection of the synopsis by the CBD. For information, contracting offices are advised that CBD personnel will no longer edit the selected classification code for potential errors; accordingly, additional care should be taken in selecting the single code most appropriate for the acquisition.

## Item IX—Physical Inventories

FAR 45.508 is revised to recognize electronic and automated inventory techniques.

Therefore, 48 CFR Parts 1, 5, 19, 27, 45, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 5, 19, 27, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

### § 1.105 OMB Approval under the Paperwork Reduction Act.

FAR segment	OMB Control No.
27.3.....	9000-0095

## PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.205 is amended by adding in paragraph (c)(1) a second sentence to read as follows:

### 5.205 Special situations.

- (c) \* \* \*
- (1) \* \* \* Reference shall be made to the appropriate CBD Numbered Note.

### 5.206 [Amended]

4. Section 5.206 is amended by removing paragraph (a) and by redesignating paragraph (b) as § 5.206.

5. Section 5.207 is amended by revising Format Item 6, Classification Code, in paragraph (b)(4); by removing in paragraph (b)(6) Format Item 17, Description, the words "See notes 4, 55." and inserting in their place "See note 9."; by adding paragraph (c)(2)(xv); and by revising paragraphs (d), (e)(1), (e)(3), and the introductory text in paragraph (g)(1) and (g)(2) to read as follows:

### 5.207 Preparation and transmittal of synopses.

- (b) \* \* \*
- (4) \* \* \*

6. CLASSIFICATION CODE. (Service or supply code number; see 5.207(g). Each synopsis shall classify the contemplated contract action under the one classification code which most closely describes the acquisition. If the action is for a multiplicity of goods and/or services, the preparer should select the one category best describing the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by the Commerce Business Daily).

- (c) \* \* \*



(2) \* \* \*

(xv) If the contracting office will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.

(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business or labor surplus area (LSA) set aside, the appropriate CBD Numbered Note will be cited.

(e) *CBD Numbered Notes*. (1) Numbered Notes are footnotes. The purpose of the Numbered Notes is to conserve space and simplify the identification of repetitive notices. An explanation of the Numbered Notes appears each week in the Monday edition of the CBD. If the Monday edition of the CBD is not printed because of a holiday, an explanation of the Numbered Notes will appear in the next day's issue. When one or more of the Notes applies to a synopsis, contracting officers should reference the note at the end of Item 17 of the synopsis; e.g., "See Note(s). . . ." Requests to add or change Notes will be submitted through channels for approval by the DAR Council and the CAA Council. The Councils will review the Numbered Notes periodically and, as appropriate, after consultation with the initiating agency, advise the Department of Commerce to delete or modify outdated or unused notes from the CBD. Contracting officers shall also include the substance of Numbered Notes whenever a proposed contract is publicized by means other than the CBD (see 5.101).

\* \* \* \* \*

(3) If the synopsis is for a proposed contract action intended to be awarded on a sole source basis, the synopsis shall refer to Numbered Note 22. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

\* \* \* \* \*

(g) \* \* \*

(1) Contracting officers shall use one of the following classification codes when the contemplated contract action is for services or when the overall acquisition can best be described as services based upon value:

\* \* \* \* \*

(2) Contracting officers shall use one of the following classification codes when the contemplated contract action is for supplies or when the overall acquisition can best be described as supplies based upon value:

\* \* \* \* \*

## PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.001 is amended by alphabetically adding the definitions "Handicapped individual" and "Public or private organization for the handicapped" to read as follows:

### 19.000 Definitions.

\* \* \* \* \*

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

\* \* \* \* \*

"Public or private organization for the handicapped" means one which (a) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (b) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (c) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

\* \* \* \* \*

7. Section 19.102 is amended by revising the first sentence in paragraph (f)(1) and by adding paragraph (f)(5) to read as follows:

### 19.102 Size standards.

\* \* \* \* \*

(f) \* \* \*

(1) Except as provided in subparagraph (f)(5) of this section, in the case of Government acquisitions set aside for small businesses, such nonmanufacturer must furnish in the performance of the contract the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States.

\* \* \* \* \*

(5) As provided in 15 U.S.C. 637(a)(17), in the case of Government acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, such nonmanufacturer may furnish any domestically produced or manufactured product when the acquisition is for a product in a class for which the Small Business Administration has determined that

there are no small business manufacturers or processors in the Federal market, and when such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small Business Act. Classes for which a waiver has been granted are as follows: None.

8. Section 19.201 is amended by revising paragraph (c)(5) and by adding paragraph (c)(9) to read as follows:

### 19.201 General policy.

\* \* \* \* \*

(c) \* \* \*

(5) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

\* \* \* \* \*

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside (including those involving Labor Surplus Areas), under Subpart 19.8 as a section 8(a) award, or under a procedure authorized by section 1207 of Pub. L. 99-661, if applicable.

\* \* \* \* \*

9. Section 19.202 is revised to read as follows:

### 19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed below and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, or under a procedure authorized by section 1207 of Pub. L. 99-661. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

10. Section 19.403 is amended by revising in paragraph (a) the first two sentences; by removing in paragraph (c)(4) the words "unlimited-rights"; by revising paragraphs (c)(5) and (c)(8); by removing at the end of paragraph (c)(7) the word "and"; and by adding paragraphs (c)(9) and (c)(10) to read as follows:

### 19.403 Small Business Administration breakout procurement center representatives.

(a) The SBA is required by section 403 of Pub. L. 98-577 to assign a breakout



procurement center representative to each major procurement center. A major procurement center means a procurement center that, in the opinion of the administrator, purchases substantial dollar amounts of other than commercial items, and which has the potential to incur significant savings as a result of the placement of a breakout procurement representative. \* \* \*

(c) \* \* \*

(5) Have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification; \* \* \*

(8) Appeal the failure by the procurement center to act favorably on any recommendation made pursuant to subparagraphs (c) (1) through (7) of this section. Such appeal must be in writing and shall be filed and processed in accordance with the appeal procedures set out in 19.505;

(9) Conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which assigned. Such sessions shall acquaint the participants with the duties and objectives of the representative and shall instruct them in the methods designed to further the breakout of items for procurement through full and open competition; and

(10) Prepare and personally deliver an annual briefing and report to the head of the procurement center to which assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive the briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by the representative. \* \* \*

11. Section 19.501 is amended by adding paragraph (k) to read as follows:

**19.501 General.**

(k) Section 133 of Pub. L. 100-590 authorizes public and private organizations for the handicapped to participate for fiscal years 1989 through 1993 in acquisitions set-aside for small business concerns. An interested party may file a protest of an organization's status within 5 days after announcement of an award. Within 10 days after announcement of an award to an

organization for the handicapped, any small business concern which experiences or is likely to experience severe economic injury as a result of the award may file an appeal of the award. Such protests and appeals shall be filed with the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision will be final, with a copy to the contracting officer. After receipt of notice of a protest or appeal, the contracting officer shall not award the contract until (1) SBA has made a decision or (2) 10 business days have expired since receipt of the protest or appeal, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

12. Section 19.502-2 is amended by redesignating the section as paragraph (a) and revising the first sentence of new paragraph (a); and by adding paragraph (b) to read as follows:

**19.502-2 Total set-asides.**

(a) The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (b) of this subsection); and (2) awards will be made at fair market prices. \* \* \*

(b) In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(5)). This would permit small business regular dealers to provide any domestically produced product. In these cases, the contracting officer's determination in subparagraph (a)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different domestic concerns.

13. Section 19.505 is amended by revising the section title and paragraph (a) to read as follows:

**19.505 Rejecting Small Business Administration recommendations.**

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center

representative, written notice shall be furnished to the appropriate SBA center representative within 5 business days of the contracting officer's receipt of the recommendation. \* \* \*

14. Section 19.508 is amended by adding paragraph (f) to read as follows:

**19.508 Solicitation provisions and contract clauses.**

(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.

**PART 27—PATENTS, DATA, AND COPYRIGHTS**

15. Section 27.301 is amended by removing in the definitions "Nonprofit organization" and "Small business firm" the word "domestic" wherever it appears, and by revising the definitions "Inventions" and "Subject invention" to read as follows:

**27.301 Definitions.**

"Invention," as used in this subpart, means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.). \* \* \*

"Subject invention," as used in this subpart, means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract; provided, that in the case of a variety of plant, the date of determination defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of contract performance. \* \* \*

16. Section 27.302 is amended by revising paragraphs (a), (b), (c), and (e); by revising the introductory text of paragraph (d); by redesignating existing paragraph (h) as (i) and adding a new paragraph (h); and by redesignating paragraph (i) as (j) and revising the second sentence to read as follows:

**27.302 Policy.**

(a) *Introduction.* (1) The policy of this section is based on Chapter 18 of title 35, U.S.C. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR Part 401), the Presidential Memorandum on Government Patent



Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, which provides that, to the extent permitted by law, the head of each Executive Department and agency shall promote the commercialization, in accord with the Presidential Memorandum, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and, to minimize the costs of administering policies in this area.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) of this section, each contractor may, after disclosure to the Government as required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) of this section, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise (1) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government (see 27.303(c)), (2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of Chapter 18 of title 35, U.S.C. and the Presidential Memorandum, (3) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign

intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities, or (4) when the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to the Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under 35 U.S.C. 202(a)(iv) for agreements with small business firms and nonprofit organizations are limited to inventions occurring under the above two programs.

In the case of small business firms and nonprofit organizations, when an agency justifies and exercises the exception at subparagraph (b)(2) of this section on the basis of national security, the contract shall provide the contractor with the right to elect ownership to any invention made under such contract as provided by the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if the invention is not classified by the agency within 6 months of the date it is reported to the agency, or within the same time period the Department of Energy (DOE) does not, as authorized by regulation, law or Executive order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph. When a contract involves a series of separate task orders, an agency may apply the exceptions at subparagraph (b) (2) or (3) of this section to individual task orders, and it may structure the contract so that modified patent rights clauses will apply to the task order even though the clause at 52.227-11 is applicable to the remainder of the work. In those instances when the Government has the right to acquire title at the time of contracting, the contractor may, nevertheless, request greater rights to an identified invention (see 27.304-1(a)). The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) of this section.

(c) *Government license.* The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternative I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international

organization pursuant to existing treaties or agreements identified in the contract, or to otherwise effectuate such treaties or agreements. In the case of long term contracts, the contract may also provide (see Alternate II) such rights with respect to treaties or agreements to be entered into by the Government after the award of the contract.

(d) *Government right to receive title.* (1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with subparagraph (b) (1), (2), (3), or (4) of this section. In addition, to the extent provided in the patent rights clause, the Government has the right to receive title to an invention—

\* \* \* \* \*

(e) *Utilization reports.* The Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality or utilization reports which are marked with restrictions to the extent permitted by 35 U.S.C. 205 or other applicable laws and 37 CFR Part 401. Agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors will continue to provide confidential markings to help prevent inadvertent release outside the agency.

\* \* \* \* \*

(h) *Small business preference.* (1) Nonprofit organization contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market. Subparagraph (k)(4) of the clause is not intended, for example, to prevent nonprofit organizations from providing larger firms with a right of first refusal or other options in inventions that relate to research being supported under long-term or other arrangements with larger



companies. Under such circumstances, it would not be reasonable to seek and to give a preference to small business licensees.

(2) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Secretary of Commerce. To the extent deemed appropriate, the Secretary of Commerce will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary of Commerce intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All the above investigations, discussions, and negotiations of the Secretary of Commerce will be in coordinations with other interested agencies, including the Small Business Administration; and in the case of a contract for the operation of a Government-owned, contractor-operated research or production facility, the Secretary of Commerce will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

\* \* \* \* \*

(j) *Confidentiality of inventions.* \* \* \* Accordingly, 35 U.S.C. 205 and 37 CFR Part 40 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. \* \* \*

17. Section 27.303 is revised to read as follows:

#### 27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a) (1) The contracting officer shall insert the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, except for contracts of the Department of Defense (DOD), the Department of Energy (DOE), or the National Aeronautics and Space

Administration (NASA), any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify 52.227-11(f) to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-11, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(4) If the contracting officer includes the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), in a contract with a nonprofit organization for the operation of a Government-owned facility, the contracting officer will include Alternate III in lieu of subparagraph (k)(3) of the clause.

(5) If the contract is for the operation of a Government-owned facility, the contracting officer may include Alternate IV with the clause at 52.227-11.

(b) (1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor

(Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) of this section.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-12, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(c) (1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with subparagraphs (c) (2) and (4) or paragraph (d) of this section or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this subparagraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) Pursuant to their statutory requirements, DOE and NASA may specify in their supplemental regulations use of a modified version of the clause at 52.227-13 in contracts with other than small business concerns or nonprofit organizations.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall



use the clause with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(4) Section 401 of title 37 of the Code of Federal Regulations provides that in contracts with small business firms and nonprofit organizations, when an agency exercises the exceptions at 27.302(b) (2) or (3) it shall use the clause at 52.227-11, with such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. The greater rights determinations provision of 52.227-13(b)(2) shall be included in the modified clause.

(d) (1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) of this section as otherwise applicable, agency supplemental regulations may provide another clause and specify its use, or the contracting officer shall insert the clause prescribed in paragraph (c) of this section:

(i) The contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) Before using any of the exceptions under subparagraph (d)(1) of this section in a contract with a small business firm or a nonprofit organization and before using the exception of subdivision (d)(1)(ii) of this section for any contractor, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be

prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a contract and any subcontract issued under it, or to any contract to which an exception is applicable. In cases when subdivision (d)(1)(ii) of this section is used, the determination shall also include an analysis justifying the determination. This analysis should address, with specificity, how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. For contracts with small business firms and nonprofit organizations, a copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or offeror along with a notification of its appeal rights under 35 U.S.C. 202(b)(4) in accordance with 27.304-1(a). In the case of small business and nonprofit contractors, except for determination under subdivision (d)(1)(iii) of this section, the agency shall, within 30 days after award of a contract, also provide copies of each determination, statement of fact, and analysis to the Secretary of Commerce. These shall be sent within 30 days after the award of the contract to which they pertain. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) To qualify for the clause at 52.227-11, a prospective contractor may be required by the agencies excepted under subdivision (a)(1)(i) of this section to certify that it is either a small business firm or a nonprofit organization. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) Alternates I and II to the clauses at 52.227-11, 52.227-12, and 52-227-13, as applicable, may be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, an Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

18. Section 27.304-1 is revised to read as follows:

#### 27.304-1 General.

##### (a) Contractor appeals of exceptions.

(1) In accordance with 35 U.S.C. 202(b)(4), a small business firm or nonprofit organization contractor has the right to an administrative review of a determination to use one of the exceptions at 27.303(d)(1)(i)-(iv) if the contractor believes that a determination is either (i) contrary to the policies and objectives of this subsection or (ii) constitutes an abuse of discretion by the agency. Subparagraphs (a) (2) thru (7) of this subsection specify the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a contract or for suspending performance under an award. However, pending final resolution of the claim, the contract may be issued with the patent rights provision proposed by the agency; but should the final decision be in favor of the contractor, the contract will be amended accordingly and the amendment made retroactive to the effective date of the contract.

(2) A contractor may appeal a determination by providing written notice to the agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(3) The appeal shall be decided by the head of the agency or designee who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter for fact-finding.

(4) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as the agency may rely upon. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding



proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor by registered or certified mail.

(6) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(7) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials, or any other information in the administrative record. In cases referred for fact-finding, the agency head or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. The agency head or designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make arguments and rebuttal. The decision of the agency head or designee shall be in writing and if it is unfavorable to the contractor, include an explanation of the basis of the decision. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice. In accordance with 35 U.S.C. 203, a small business firm or a nonprofit organization contractor adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand, or modify, as appropriate, the determination of the Federal agency.

(b) *Greater rights determination.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally-supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention or rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except subparagraphs (d)(1), (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause.

(d) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of 35 U.S.C. 202-204.

(e) *Additional requirements.* (1) If it is desired to have the right to require any of the following, when using the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number, and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), and 52.227-13,

Patent Rights—Acquisition by the Government), the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(f) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the contractor's license in accordance with 27.302(i)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights,



before initiating any march-in proceeding in accordance with the procedures of subparagraph (g)(2) of this section, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable and if known to the agency, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in, in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in this section and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the head of the agency or designee.

(3) Within 30 days after the receipt of the written notice of march-in, the contractor, its assignee or exclusive licensee, may submit in person, in writing, or through a representative information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

(4) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as the agency may present. A transcribed record shall be made and shall be

available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensee shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor, its assignee, or licensee.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor, its assignee, or exclusive licensee by registered or certified mail. The contractor, its assignee or exclusive licensee, and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor, oral arguments will be held before the agency head or designee that will make the final determination.

(6) In case in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor, its assignee or exclusive licensee and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of the agency or designee and sent to the contractor, its assignee, or exclusive licensee, by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons

upon which the proceeding was initiated may be exercised.

(7) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(8) These procedures shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor," as used herein, shall be deemed to include the inventor and the term "exclusive licensee" shall be deemed to include partially exclusive licensee.

(9) An agency determination unfavorable to the contractor, its assignee, or exclusive licensee shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 203(2).

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval. Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee will be subject to the same provisions as the contractor).

#### 27.304-2 [Amended]

19. Section 27.304-2 is amended by removing in the first sentence of paragraph (b) the words "27.304-1(f)(2), or 1.4".

20. Section 27.304-5 is amended by revising paragraph (c) to read as follows:

#### 27.304-5 Appeals.

\* \* \* \* \*

(c) Appeals procedures established under paragraph (b) of this subsection shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in 37 CFR Part 401.6(e)-(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1) (i) through (v) including any dispute as to whether or not an invention is a subject invention.

\* \* \* \* \*

21. Section 27.305-5 is amended by adding paragraph (c) to read as follows:



**27.305-5 Publication or release of invention disclosures.**

(c) As an additional protection for small business firms and nonprofit organizations 37 CFR Part 401 prescribes that agencies shall not disclose or release, in accordance with 35 U.S.C. 205, for a period of 18 months from the filing date of the application to third parties pursuant to request under the Freedom of Information Act or otherwise copies of any document which the agency obtained under contract which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other Government agencies or contractors of Government agencies under an obligation to maintain such information in confidence.

**PART 45—GOVERNMENT PROPERTY**

22. Section 45.508 is amended by removing the existing second sentence; by redesignating the existing third sentence as the second sentence; and by adding a new third sentence to read as follows:

**45.508 Physical inventories.**

\* \* \* These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. \* \* \*

23. Section 45.606-5 is amended in paragraph (d)(3) by adding a second sentence to read as follows:

**45.606-5 Instructions for preparing and submitting schedules of contractor inventory.**

(d) \* \* \*  
(3) \* \* \* In addition, hazardous material or property contaminated with hazardous material shall be identified as to the type of hazardous material.  
\* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

24. Section 52.219-5 is amended by adding Alternate I to read as follows:

**52.219-5 Notice of total small business—labor surplus area set-aside.**

\* \* \*  
*Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business

manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:

(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.  
\* \* \*

**52.219-6 [Amended]**

25. Section 52.219-6 is amended by adding Alternate I to read as follows:

*Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.  
\* \* \*

26. Section 52.219-7 is amended by adding Alternate I to read as follows:

**52.219-7 Notice of partial small business set-aside.**

\* \* \*  
*Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:

(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.  
\* \* \*

27. Section 52.219-15 is added to read as follows:

**52.219-15 Notice of participation by organizations for the handicapped.**

As prescribed in 19.508(f), insert the following clause:

**Notice of Participation by Organizations for the Handicapped (June 1989)**

(a) *Definitions.*

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(b) The Offeror certifies that it is [ ] is not [ ] a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

(c) An Offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

"Public or private organization for the handicapped" means one which (1) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.  
(End of clause)

28. Section 52.227-11 is revised to read as follows:

**52.227-11 Patent Rights-Retention by the Contractor (Short Form).**

As prescribed in 27.303(a), insert the following clause:

**Patent Rights-Retention by the Contractor (Short Form) (Jun 1989)**

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or



Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by contractor.*

(1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after

election of title, or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c) (1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decided not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal Agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor

has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing revocation or modification of the license.

(f) *Contractor action to protect the government's interest.* (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "The invention was made with Government support under (identify the contract) awarded by (identify the Federal



agency). The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in

which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal.

The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(1) *Communications.*

(Complete according to agency instructions.)

(End of clause)

*Alternate I (JUN 1989).* As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: .....

\*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

*Alternate II (JUN 1989).* As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of the contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

*Alternate III (JUN 1989).* As prescribed in 27.303(a)(4), substitute the following in place of subparagraph (k)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75



percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

**Alternate IV (JUN 1989).** As prescribed in 27.303(a)(5), include the following subparagraph in paragraph (f) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

29. Section 52.227-12 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1989)"; by revising and alphabetically inserting in paragraph (a) the definitions "Inventions", "Small business firm", and "Subject invention"; and by alphabetically adding the definition "Nonprofit organization"; by revising paragraphs (e)(3), (1), and Alternate I; by adding Alternate II; and by removing the derivation lines following "(End of clause)" and Alternate I to read as follows:

**52.227-12 Patent rights-retention by the contractor (long form).**

(a) \* \* \*  
"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in

Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) \* \* \*  
(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(1) *Communications.*  
(Complete according to agency instructions.)

**Alternate I (JUN 1989).** As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: .....

[\*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

**Alternate II (JUN 1989).** As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreement with

respect to subject inventions made after the date of the amendment.

30. Section 52.227-13 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1989)"; by revising in paragraph (a) the definitions "Invention" and "Subject invention"; by removing in the second sentence in paragraphs (d) (2) and (3) the words "the Federal Property Management Regulations" and inserting in their place the words "37 CFR Part 404"; by revising paragraph (d)(4) and Alternate I; by removing the derivation lines following "(End of clause)" and Alternate I; and by adding Alternate II to read as follows:

**52.227-13 Patents rights-acquisition by the government.**

(a) \* \* \*  
"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(d) \* \* \*  
(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in subparagraph (c)(1) of this clause.

**Alternate I (JUN 1989).** As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: .....

[\*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties



or agreements that are in effect on the date of the award but are not listed.]

*Alternate II* (JUN 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

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# Federal Register

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June 12, 1989

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## Part VI

### Department of Health and Human Services

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#### Food and Drug Administration

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##### 21 CFR Part 801

**Medical Devices; Labeling for Menstrual  
Tampons; Ranges of Absorbency;  
Reproposed Rule**



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

### 21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

### Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Reproposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is reproposing amendments to its tampon labeling regulation. The reproposed rule would require that manufacturers of menstrual tampons determine tampon absorbency using a test method specified in the reproposal, and, based on the results of that testing, express absorbency on tampon labeling by using one of six specified absorbency terms, each of which corresponds to a range of absorbency set forth in the reproposal. The reproposed rule would enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles before purchasing them.

Labeling of tampons to allow consumers to compare the absorbency of different brands and styles is important because the use of tampons is associated with toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, and the risk of contracting TSS increases with the use of tampons of higher absorbency. FDA is issuing this reproposal under the Federal Food, Drug, and Cosmetic Act (the act).

FDA is also announcing its tentative final response to a citizen petition submitted by the Public Citizen Health Research Group concerning absorbency labeling for tampons.

**DATES:** Written comments by August 11, 1989. The agency is proposing that any final rule based on the reproposal become effective for packages of tampons initially introduced or initially delivered for introduction into commerce after December 12, 1989.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA 305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

## SUPPLEMENTARY INFORMATION:

### I. Background

In the Federal Register of September 23, 1988 (53 FR 37250) (corrected 53 FR 44551, November 3, 1988, and 54 FR 1844, January 17, 1989), FDA proposed to amend its current regulation governing user labeling for menstrual tampons (21 CFR 801.430) to require uniform absorbency testing of tampons and to standardize a method of expressing absorbency on tampon package labels. The agency proposed such testing and labeling requirements to enable consumers to make interbrand comparisons and to choose the least absorbent tampon needed to control menstrual flow and, thus, reduce their risk of TSS.

Interested persons were given until December 22, 1988, to submit written comments on the proposal. The agency received more than 270 comments from tampon manufacturers, individual consumers, consumer groups, health-care professionals, and researchers. A summary of the comments received on the September 23, 1988, proposed rule and the agency's response to them are set out in section III of this preamble.

After analyzing all the comments, FDA has tentatively concluded that, with the modifications contained in the reproposal, the absorbency test methodology and sampling procedures in reproposed § 801.430(f) are appropriate. However, after analyzing numerous comments from consumers, consumer groups, and manufacturers concerning the agency's initial proposal to use a system of letters to represent absorbency ranges and not to standardize currently used terms of absorbency (e.g., regular, super, and super plus), the agency has decided to repropose amendments to § 801.430 that would replace the letter designations with six absorbency terms that are different from currently used terms. The new terms, each of which would convey absorbency information, would correspond to the six absorbency ranges in the initial proposal (53 FR 37250). FDA is also now proposing to require that the applicable new term of absorbency be placed on the principal display panel(s) of tampon packages, separate from and more prominent than any other information except the corresponding numerical range of absorbency, if used. The agency believes that the reproposed amendments would ensure truthful, accurate, and nonmisleading labeling and would facilitate interbrand comparisons of tampon absorbency.

The absorbency labeling scheme set forth in the reproposal is discussed

under section II below and is based on FDA's analysis of comments on the initial proposal. FDA believes that the changes in the initial proposal are in character with the original labeling scheme and that they are a logical outgrowth of the initial proposal and the comments on it. Accordingly, FDA believes that it could justify publishing these reproposed amendments as a final rule. However, neither tampon manufacturers nor consumers were afforded an opportunity to comment on the particulars of the labeling scheme included in the reproposal. Publication of this document as a final rule at this time, without further opportunity for public participation could, therefore, result in litigation challenging the rule on procedural grounds and delay promulgation of a final tampon absorbency labeling rule even further. Under these circumstances, FDA believes that publication of a reproposal, rather than a final rule, is the more prudent, and ultimately the more expeditious, course of action. The additional comment period is to ensure that all interested persons have sufficient opportunity to consider fully the feasibility of the reproposed absorbency labeling scheme and its impact on consumers and manufacturers.

In addition to the comments on these revisions to the labeling, FDA is requesting comments on the likelihood of an outcome, due to the use of fixed nonoverlapping ranges, that would be inconsistent with the goal of enabling consumers to choose the least absorbent tampon needed to control menstrual flow and thus reduce their risk of TSS. This request for comments is discussed in section III B, paragraph 8 of this preamble (see also paragraph 5) and concerns the effects of product reformulation on consumers.

This reproposal contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Title:** Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule.

**Description:** The proposed regulation requires that menstrual tampons be labeled



consistently so that purchasers can compare absorbency between brands.

*Description of Respondents:* Businesses or other for profit.

*Estimated Annual Reporting and Recordkeeping Burden:*

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
801.430(e).....	5	0*	0	0
801.430(f).....	5	1	3,500 hrs.	17,500 hrs.
801.430(g).....	5	0*	0	0
Total.....	15	1	3,500 hrs.	17,500 hrs.

\* Since tampon manufacturers are already required to provide labeling with the device, the minor labeling changes associated with this amendment will not be an additional burden.

FDA has submitted a copy of this reproposal to OMB for its review of these information collection requirements. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing this estimated burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

## II. Contents of the Reproposal

FDA is reproposing to amend § 801.430 *User labeling for menstrual tampons* by revising paragraph (b), the introductory text of paragraph (d), paragraphs (d)(2), (d)(3), and (d)(4); by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them; and by adding new paragraphs (e) and (f). These amendments, as reproposed, are summarized as follows:

### A. Introductory Information (§ 801.430(b))

The agency is not proposing any revisions to paragraph (b) beyond those included in the initial proposal. This paragraph would continue to state that data show that TSS, a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons and that to protect the public and to minimize the serious adverse effects of TSS, menstrual tampons are to be tested for absorbency and labeled as required in § 801.430.

### B. Consumer Information (§ 801.430(d))

On its own initiative, the agency is proposing for the first time to amend the introductory text of paragraph (d) to remove any reference to a package insert or package and, instead, to refer to labeling, a term that includes all package labels as well as package inserts. (See section 201(m) of the act, 21 U.S.C. 321(m).) This revision would not affect the current provisions that allow the consumer information required by

paragraphs (d)(1) (i) and (ii), regarding the warning signs of TSS and what to do if they appear, to be included in a package insert rather than on the package label. (See current § 801.430(c).)

In response to comments and in light of new data, discussed in section III A, paragraph 3 of this preamble, FDA is proposing to update the estimate of the incidence of TSS contained in § 801.430(d)(2). The agency is now proposing, and requesting comment on, a revision of the estimated incidence of TSS to 1 to 17 (from 6 to 17) per 100,000 menstruating women and girls per year.

FDA is not proposing any revisions to § 801.430(d)(3) beyond those included in the initial proposal. Paragraph (d)(3) would state the advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

As discussed in section III A, paragraph 3 of this preamble, FDA is now proposing, and requesting comment on, a clarification of current § 801.430(d)(4) that would remove the word "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods".

### C. Absorbency Labeling (§ 801.430(e))

FDA had proposed requiring manufacturers to express absorbency on tampon package labels by the use of a letter, A-F, corresponding to one of six ranges of absorbency. The agency is now proposing, and requesting comment on, another approach. As reproposed, § 801.430(e)(1) would establish a new set of standardized terms of absorbency (low absorbency, medium absorbency, medium-high absorbency, high absorbency, very high absorbency, and highest absorbency) for each of the six ranges of absorbency included in the initial proposal, instead of the letters.

FDA also is now proposing in § 801.430(e)(2) to require that the applicable new absorbency term be placed in a prominent and conspicuous

location on the principal display panel(s), separate from any other information on the principal display panel(s) except the corresponding numerical range of absorbency, if used. The reproposal would not, however, proscribe the use of currently used or other terms of absorbency so long as the resulting labeling were not false or misleading or otherwise in violation of section 502 of the act (21 U.S.C. 352) or any other provision of the act.

Reproposed § 801.430(e)(3) would require that the package label include an explanation of the range of absorbency and its corresponding term and how consumers could use that information to make interbrand comparisons of tampon absorbency and, thereby, select tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

Reproposed § 801.430(e)(4) would provide that if a term of absorbency (e.g., junior, regular, super, or super plus), other than that required by reproposed § 801.430(e)(1) is used in labeling, such as on an individual tampon wrapper, the absorbency term specified in paragraph (e)(1) must also be used.

### D. Absorbency Testing (§ 801.430(f))

The agency is not proposing any revisions to the introductory text of paragraph (f) beyond those included in the initial proposal. Thus, under the reproposal, a manufacturer would have to measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

The agency now proposes to further amend § 801.430(f)(1) to require that a manufacturer design and implement a sampling plan that would include collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability would be 90 percent that at least 90 percent of the absorbencies of



individual tampons within a package would be within the range of absorbency stated on the package label. The initial proposal would have required that the probability be 95 percent that at least 95 percent of the absorbencies of individual tampons within a brand and type were within the range of absorbency stated on the package label.

In response to comments on the initial proposal, § 801.430(f)(2) would be further revised to specify that the condom used in the test apparatus have a tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the standard procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)." FDA has also revised paragraph (f)(2) to state that the test is to be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon, that the test results are to be discarded if fluid is detected in the folds of the condom before the tampon is saturated, and that the condom is to be replaced at the end of 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

FDA is not proposing any revisions to § 801.430(f)(3) beyond those included in the initial proposal. Paragraph (f)(3) would provide procedures for an alternative absorbency test method subject to prior FDA approval and public notice of such approval.

#### *E. Vending Machines (§ 801.430(g))*

The reproposal includes a new provision that would redesignate paragraph (e) as paragraph (g) and revise it. Revised paragraph (g) would exempt any menstrual tampon intended to be dispensed by a vending machine from the requirements of § 801.430, except the requirement of paragraph (e)(4) of this section. Thus, under the repropounded rule, vending machine tampons would not be required to contain any absorbency labeling. If, however, a nonstandardized term were used on the individual tampon wrapper, the absorbency term specified in § 801.430(e)(1) would also be required.

#### *F. Effective Date (§ 801.430(h))*

The reproposal also includes a new provision that would redesignate current paragraph (f) as paragraph (h) and revise newly designated paragraph (h). Revised paragraph (h) would require that any menstrual tampon that was not labeled as required by paragraphs (c), (d), and (e) of this section and that was initially introduced or initially delivered

for introduction into commerce 6 months after date of publication of the final rule would be misbranded under sections 201(n) and 502 (a) and (f) of the act.

### **III. Summary and Analysis of Comments**

#### *A. General Comments*

1. Almost all the comments, including those from individual consumers, consumer groups, and manufacturers, supported FDA's overall goal to ensure that absorbency information be provided to consumers. One manufacturer supported the basic design of the proposed rule, another stated that the time has come for a meaningful tampon absorbency labeling requirement that will enable consumers to make appropriate interbrand comparisons and supported the proposal in that regard, and a third manufacturer generally supported the objective to standardize absorbency labeling among tampon brands. One consumer group specifically agreed with FDA's stated intentions, and the other consumer groups, and individual consumers, expressed general, overall support for the proposed rule. Specific suggestions included in the comments on how to improve the proposed rule to provide the most truthful, accurate, and nonmisleading information on tampon absorbency to consumers are addressed in subsequent paragraphs of this preamble.

For the reasons discussed in section I of this preamble, FDA has concluded that amendments to the regulations should be repropounded. The reproposal would enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of any brand and style, to choose the lowest absorbency needed to control menstrual flow, and, as a result, to reduce their risk of TSS.

2. One comment opposed any final rule on the grounds that consumers would not use the information, money would be wasted in enforcement, and the cost of tampons would increase.

Although the testing requirements and the labeling changes imposed by a final rule based on the initial proposal or on this reproposal would result in costs to manufacturers, the agency disagrees that enforcement costs or increases in the cost of tampons would be significant compared to the public health benefit of providing truthful, accurate, and nonmisleading information about tampon absorbency to consumers. The comment contained no data or information to support any changes in the cost estimates contained in the agency's initial economic impact analysis or to support the contention

that consumers would not use tampon absorbency information.

3. Five comments addressed the association of TSS with tampon absorbency. Two comments reviewed the data supporting that association, noting that there is still no scientific explanation for the association of tampon absorbency with TSS incidence. These comments claimed that absorbency may be a surrogate for some other risk factor, such as the introduction of oxygen into the vaginal environment with tampon insertion, citing Ref. 46 of the preamble to the initial proposal. The authors of one of these two comments stated that they had recently submitted for publication a paper reanalyzing epidemiology data that they claimed showed that TSS is more strongly linked to tampon oxygen content than to tampon absorbency. One comment noted that not all TSS cases are associated with tampon use, and wondered how such cases arise. Two other comments suggested that FDA needs to update the estimates of the incidence of TSS (contained in current § 801.430(d)(2)) in light of new data. One of these two comments specifically suggested that information presented at the International Symposium on TSS, held in Atlanta, Georgia on November 15-18, 1987, should be used as the basis for such an update.

FDA agrees that there is a lack of definitive information about the mechanism by which tampon absorbency is associated with an increased risk of TSS. FDA is unaware of any evidence that tampon oxygen content is more closely linked to TSS risk than is tampon absorbency; Ref. 46 of the preamble to the proposed rule merely speculates that absorbency is a surrogate for some other factor. Neither the reanalysis of epidemiology data nor the paper submitted for publication containing the reanalysis was provided to the agency. By contrast, and as explained in the preamble to the initial proposal, the available data (see 53 FR 37250 and 37251 and the references cited there) demonstrate that there is a statistically significant association between tampon absorbency and the incidence of TSS. Therefore, FDA continues to believe that additional labeling is necessary to ensure that women can make informed choices to select the least absorbent tampon needed and thus decrease their risk of the disease.

As stated in the preamble to the proposed rule (53 FR 37250), although there has been a decrease in cases of TSS reported to the Centers for Disease



Control (CDC), new cases continue to be reported to CDC, and deaths from TSS continue to be reported to FDA's medical device reporting system. The decrease in reported cases could represent a decrease in actual cases of TSS as a result of FDA-mandated labeling regarding TSS, FDA's education efforts, and other factors; it could also reflect fewer cases being reported to CDC. The agency is familiar with the November 1987 reference cited in the comment. The reference is to a recently published study based on a presentation made by CDC scientists at a November 1987 scientific conference on TSS.

The study (Ref. 1) shows that following active surveillance for TSS in Los Angeles County and in the states of Missouri, New Jersey, Oklahoma, Tennessee, and Washington a total of 83 menstrually related cases of TSS were reported. Extrapolating from these data, the study shows that the nationwide incidence of menstrual TSS in 1986 was estimated to be 1.05 per 100,000 per year. FDA recognizes that the actual incidence of TSS is not known and can be estimated only by extrapolating from the number of reported cases. In 1982, FDA was aware of three such estimates of the actual incidence of TSS: (1) 6.2 per 100,000 menstruating girls and women per year; (2) 17 per 100,000 menstruating girls and women per year; and (3) 6.6 per 100,000 menstruating girls and women per year. (See 47 FR 26982; June 22, 1982, and the references cited there.) Using these figures, the agency concluded that a reasonable estimate of the actual incidence was between 6 and 17 per 100,000 menstruating women and girls per year (47 FR 26982). Because the actual incidence of TSS can only be estimated, FDA believed then, as it does now, that consumers must be aware of the range in estimates. Combining this new estimate (Ref. 1) with the earlier data (47 FR 26982), FDA has tentatively concluded that a reasonable estimate of the current actual incidence of TSS is between the lowest and highest reported estimates, i.e., between 1 and 17 per 100,000 menstruating women and girls per year. Accordingly, FDA now proposes to revise the estimated incidence of TSS in current § 801.430(d)(2) to 1 to 17 (instead of 6 to 17) per 100,000 menstruating women and girls per year.

FDA also proposes to revise § 801.430(d)(4) to remove "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods". Another recently published study based on a presentation at the November 1987

scientific conference on TSS was a multistate case-control study of risk factors for menstrual TSS that compared 108 TSS cases in 1986-1987 with 185 controls selected from friends of the patients and 187 telephone exchange-matched controls (Ref. 2). This study confirmed that tampon use is a risk factor for developing TSS during menstruation, and that the risk increases with increasing tampon absorbency. The study also confirmed an earlier finding by CDC (47 FR 26986) that continuous use of tampons throughout the menstrual period increases the risk of TSS, and, further, demonstrated that each day of continuous tampon use increases the risk of TSS. Beginning in 1982, FDA had required manufacturers to include the advice that women could "possibly" reduce their risk of TSS by alternating tampon use with sanitary napkin use, based on CDC's earlier finding (47 FR 26986). In view of the new data, the agency now proposes to revise current § 801.430(d)(4) by removing the word "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods".

4. Several manufacturers commented on FDA's statement in the preamble to the proposed rule (53 FR 37254) that tampons are misbranded under section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(1)) because current tampon labeling does not contain any information with which a woman can determine the relative absorbency of different brands of tampons. One manufacturer commented that FDA never communicated this view to the industry in any of the several reviews done by FDA staff of tampon package and package insert labeling provided to the agency in premarket notification submissions under section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of Part 807 of FDA's regulations (21 CFR Part 807 Subpart E). Another manufacturer disagreed that the failure to provide such information rendered tampons "misbranded" under current law, and argued that a product should be considered misbranded only if it failed to comply with a labeling rule after its effective date. Yet another manufacturer expressed a similar view and sought to support its position by quoting the agency itself, "[i]n the absence of the regulation, however, violation of that specific authority does not necessarily occur by conduct that the regulation would have covered." (47 FR 39147 at 39154; September 7, 1982), and by citing *National Nutritional Foods*

*Ass'n v. Weinberger*, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 825 (1975). This comment recommended that, to avoid any possible confusion and misinterpretation, the preamble to any final rule make clear that tampons currently on the market are not misbranded, and that a tampon could not be considered misbranded for noncompliance with a final rule unless the tampon were introduced into commerce after the rule became effective. Two consumer groups supported the statement in the preamble to the effect that, without the additional absorbency information, tampons are misbranded.

As the agency tentatively concluded (53 FR 37254), omission of uniform absorbency information does render tampons misbranded within the meaning of sections 201(n) and 502(a) and (f)(1) of the act (21 U.S.C. 321(n) and 352(a) and (f)(1)). But, rather than act against individual tampons to remedy the deficiency, FDA has proposed, consistent with its authority, to address the misbranding by requiring a uniform labeling system through rulemaking. Thus, FDA stated in the preamble to the proposed rule (53 FR 37254) that "any tampon that is not labeled as required and that is initially introduced \* \* \* after the effective date of the rule *would be misbranded* \* \* \*" (Emphasis added.) And, as provided in § 801.430(h) of the reproposal, any tampon that is not labeled as required by any final rule and that is initially introduced or initially delivered for introduction into commerce after the effective date of the final rule would be misbranded under sections 201(n) and 502(a) and (f)(1) of the act. (The effective date of the final rule is discussed in section III E, paragraph 17 of this preamble.) FDA advises, however, that those and the other device misbranding provisions of the act are self-executing and apply to all labeling of all tampons, and that compliance with the labeling requirements of any final rule would not preclude FDA from taking action against any tampon the labeling of which misbranded the product in any respect, or which otherwise caused the product to be in violation of the act.

#### B. Approaches to Absorbency Labeling

Many comments were received from consumers, consumer groups, and tampon manufacturers on FDA's initial proposal to require that tampon absorbency be expressed by a letter representing a range of absorbency rather than as a single number.

5. One consumer group and one manufacturer argued that a single



number is necessary to adequately convey tampon absorbency information to consumers. These comments claimed that the use of ranges would prevent women from being able to distinguish between tampon brands or styles of known absorbency at either the low or high end of a given absorbency range. The consumer group further claimed that the use of ranges would limit the choices available to consumers to only three. The group also argued that single numbers are more informative and clearer than ranges and "will more easily facilitate interbrand comparisons." The manufacturer commented that a range concept would be acceptable to define broad categories, but that manufacturers should be allowed to state where in a range a product falls, using a single number for absorbency derived from averaging test results from a sample of 16 tampons.

Most individual consumers who commented favored the use of nonoverlapping ranges, as did three other consumer groups, and three other manufacturers. These comments generally agreed with FDA's tentative conclusion (53 FR 37260) that variations in tampon production and tampon absorbency testing make the use of ranges necessary, and that the ranges chosen by FDA were appropriate and as narrow as possible given current production and testing capabilities. Two consumer groups argued that the need for accurate, clear, and easily comprehensible absorbency disclosure far outweighs the theoretical disadvantage of limiting the variety of new formulations.

As stated in the preamble to the initial proposal (53 FR 37260), FDA tentatively concluded that the data show that a single numerical designation does not and cannot accurately represent the contents of a given box of tampons. Because of the variations in tampons, as described in the preamble to the proposed rule (53 FR 37260 and 37261), and in the syngyna testing method, as discussed in section III C, paragraph 11 of this preamble, currently the only truthful, accurate, and nonmisleading representation of the contents of a box can be that it contains tampons with absorbencies within a given range. A single number, representing the average absorbency of any sample of tampons, would and could not accurately represent the absorbency of individual tampons. (See section III C, paragraphs 11 and 12 of this preamble for a complete discussion of sampling.) For these reasons, FDA continues to believe that the use of single numbers is not

feasible at this time. If future advances in technology allowed the production of tampons and the measurement of their absorbency such that only slight variations from an average absorbency were found, FDA would consider proposing amendments to any final rule. The reproposal would permit, but not require, a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency (see section III B, paragraphs 7 and 10 of this preamble and § 801.430(e)(2) of the reproposal) whenever the term is used, e.g., medium absorbency (6-9 grams).

Further, FDA disagrees that the use of ranges would limit the choices available to consumers to only three. The reproposal would establish six ranges. To be sure, the initial proposal and the reproposal would limit the choices available to consumers to only those brands or styles that fall within one of six nonoverlapping ranges and would preclude marketing of any products which fall at or near the limits of the ranges, i.e., average absorbency of 6, 9, 12, 15, or 18 grams. Although most currently manufactured products would meet the requirements of this reproposal as to absorbencies and tolerance intervals, a manufacturer might have to improve its quality control or reformulate a few of its products if these products were to remain on the market. However, based on previous studies (53 FR 37260), consumer choice in terms of currently marketed products would not be significantly decreased by limiting the ranges to six. Although hypothetical future choices available to the consumer could be increased by allowing overlapping ranges (53 FR 37255), FDA continues to believe that if overlapping ranges were allowed they would not provide unambiguous absorbency information (53 FR 37260).

6. Three consumers commented that single numbers would be better than ranges, one claiming that single numbers are used successfully for sunscreens, and another claiming that disadvantaged populations would have difficulty understanding ranges. Another consumer favored using ranges, but indicated that six categories are too many and recommended that there be only three categories. Finally, one consumer suggested that the ranges be clarified as follows: 6 and under, over 6 to 9, over 9 to 12, over 12 to 15, over 15 to 18, and over 18.

FDA continues to believe that the use of single numbers to represent grams of fluid absorbed is technically infeasible. (See section III B, paragraph 5 of this preamble.) Therefore, although the

agency agrees that the use of a sun protection factor is effective and appropriate in labeling for sunscreens, single numbers to indicate tampon absorbency would be misleading. As stated in section III B, paragraph 5 of this preamble, however, the reproposal would permit, but not require, a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency whenever the term were used. FDA disagrees with the recommendation that the ranges of absorbency be reduced from six to three. Such a reduction is unnecessary, and would diminish consumer choices among currently marketed products. FDA also rejects as unnecessarily complex the suggestion that the word "over" be added to four of the numerical ranges to eliminate confusion about overlap.

The agency is unaware of any basis for concluding that disadvantaged persons would have difficulty understanding ranges and, therefore, rejects this comment. The agency intends to revise and continue its TSS education campaign to include explanations of the new absorbency information. (See also section III I, paragraph 22 of this preamble.)

7. FDA received many comments on the use of letters to designate ranges of absorbency. One manufacturer, one consumer group, and several individual consumers, opposing the use of letters, contended that their use would create confusion because consumers are accustomed to numbers, not letters, representing quantity or size, because the use of letters would require that consumers learn two systems (the letters and the numerical ranges to which they refer), and because consumers would not know whether "A" were high or low. A comment from an individual consumer argued that "A" commonly indicates "most desirable" and, thus, would be misinterpreted by consumers. By contrast, comments from two manufacturers, two consumer groups, and most individual consumers, supported the use of letter designations. These comments supported the use of a labeling scheme that does not use numbers, arguing that letter designations would provide an accurate and simple labeling approach incorporating notions familiar to most consumers, and that, because consumers are accustomed to thinking that higher numbers are better in terms of increased protection or decreased risk (as with sunscreen labeling), any final rule should use a different system, one that would not encourage the use of higher



absorbencies. Another consumer group stated that letter designations would be easy for women to accept, noting that letters are used by the pantyhose industry. Individual consumers, also supporting the use of letter designations, claimed that most people will believe that "A" offers the least amount of absorbency, and that a letter rating would make the categories more distinct and informative and would influence consumers to use less absorbent tampons.

Although the agency agrees that the use of sun protection factors on labeling for sunscreens is effective and appropriate, FDA believes that this is so because the public understands that the higher the number, the greater the blockage of ultraviolet radiation and the greater the health benefit. In the case of tampons and TSS, the reverse would be true: the higher the number the higher the risk of TSS and the lower the public health benefit. FDA, therefore, believes that the analogy to sunscreen labeling is unpersuasive. Also, the agency continues to believe that the use of single numbers to represent grams of fluid absorbed by tampons is not feasible at this time. (See section III B, paragraph 5 of this preamble.)

FDA agrees, however, with the comments that the use of letters representing numerical ranges might be confusing and that consumers might not be able to readily ascertain which letters represented high or low absorbency. For example, if consumers assumed that the letters represented a hierarchy similar to that commonly used in educational grading systems, consumers could select a "D" thinking it was a very low absorbency product, when, in fact, it is highly absorbent. The agency has tentatively concluded, therefore, that letter designations would not provide to consumers the clear, nonmisleading absorbency information that was intended in the proposed rule, and, accordingly, has removed letter designations from the reproposal.

FDA, however, also agrees that a numerical system, by itself, would pose the problems discussed in other comments. The agency has tentatively concluded that a system in which a new set of standardized, clear, nonmisleading terms of absorbency, corresponding to standardized nonoverlapping ranges of absorbency, would best facilitate interbrand comparison of tampon absorbencies and selection of the least absorbent tampon needed. Accordingly, FDA now proposes to further revise § 801.430(e)(1) to require the use of the following absorbency terms in lieu of letters: low

absorbency, medium absorbency, medium-high absorbency, high absorbency, very high absorbency, and highest absorbency (see section III B, paragraph 10 of this preamble), each corresponding to one of the six nonoverlapping ranges provided for in the initial proposal. The applicable term, which must be on the principal display panel(s), would readily convey absorbency information to consumers. In addition, repropose § 801.430(e)(2) would permit a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency whenever the manufacturer used a term.

8. One manufacturer claimed that, if promulgated as proposed with respect to ranges of absorbency, a final rule would require the manufacturer to reformulate two of its tampon styles to increase the absorbency of one product so that it would fit into the 12 to 15 absorbency range, and to decrease the absorbency of another product so that it would fit into the 6 to 9 absorbency range. The comment maintained that the consequence of increasing absorbency would be inconsistent with the goal of encouraging the use of less absorbent tampons, and that the consequence of reducing absorbency could be an ineffective product, which in turn would lead consumers to switch to a more absorbent product and thus incur an increased risk of TSS.

FDA recognizes that, although the reproposal would not actually require reformulation, some manufacturers would need to reformulate to maintain a product in each of the specified ranges and to retain the diversity of products comparable to their current product lines. FDA believes, however, that if two of a manufacturer's product styles were so close in absorbency as to fall within a single range, it would be misleading to consumers to allow those products to be labeled as if there were a significant difference in absorbency, when the absorbencies of the two styles of tampons significantly overlapped. FDA also recognizes that reformulating could result in increased absorbency in some styles of tampons and decreased absorbency in others. FDA believes, however, that the risk posed by any increases in absorbency involved would be outweighed by the benefits to consumers of having a truthful, accurate, and nonmisleading labeling system that allowed interbrand comparison of tampon absorbencies and selection of the least absorbent tampon needed. FDA does not have any evidence to support the contention that a manufacturer would actually lower the

absorbency of one of its products to the point where it would be ineffective for all consumers, and thereby lead consumers to shift to a higher absorbency product.

FDA solicits comments on the possibility that some tampons might be reformulated and some consumers might buy more absorbent tampons than they are currently using as a result of a final rule requiring fixed nonoverlapping ranges, and on the agency's view that the benefit of truthful, nonmisleading, and accurate labeling would outweigh the potential for product reformulation or consumer use of more absorbent tampons.

9. One manufacturer argued that the dividing point between the 9 to 12 absorbency range and the 12 to 15 absorbency range should be 11.5 instead of 12 grams of fluid, as specified in proposed and repropose § 801.430(e)(1), to minimize the absorbency increase the manufacturer would be required to make in one of its tampon styles that it claims is used by about 1.5 million consumers.

FDA acknowledges that some styles of currently marketed tampons have absorbencies that are close to the boundaries between the ranges specified in the reproposal (see section III B, paragraph 8 of this preamble), and recognizes that, if the ranges of absorbency set out in repropose § 801.430(e)(1) were included in any final rule, a manufacturer might have to make small modifications in composition to ensure that its products did not have a significant number of individual tampons in a box outside the labeled range. The agency believes, however, that such small changes in composition, or in other design or production factors influencing absorbency, are routine for the tampon industry as evidenced by the repeated changes in product absorbency reported to FDA in premarket notification submissions, yet never communicated to consumers. Consistent with the data supporting the ranges of absorbency initially proposed (see 53 FR 37260), the comments supporting those ranges, and the purposes of the reproposal, FDA has tentatively concluded that the 3-gram absorbency ranges represent the narrowest ranges that can be accurately defined given current technology. The agency therefore does not believe that the 9 to 12 absorbency range should be narrowed or the 12 to 15 absorbency range broadened.

In sum, based on the data discussed and cited, and for the reasons discussed, in the preamble to the initial proposal and in section III B, paragraphs 5



through 9 of this preamble, the reproposal contains no changes in the proposed ranges of tampon absorbency.

10. FDA received many comments in response to its request for comment (53 FR 37260) on the need to standardize the absorbency terms currently used by manufacturers (e.g., regular, super, and super plus).

The agency received more than 250 comments from individual consumers, consumer groups, and manufacturers arguing that FDA should standardize or eliminate existing absorbency terms. These comments contended that letter designations combined with nonstandardized terms would be confusing, could mislead consumers as to the difference (or lack of difference) in absorbency between products, or could lead consumers to reject the letter designations in favor of the familiar terms.

Two manufacturers, three consumer groups, and most individual consumers favored standardizing currently used terms rather than eliminating them, because the terms are familiar and would be useful to consumers if they were standardized. One consumer group and several individual consumers preferred eliminating currently used terms, arguing that they are misleading.

One of the two manufacturers recommended that four terms be standardized as follows: junior, under 6; regular, 6-9; super, 9-12; and super plus, 12-15, with no terms for the two top ranges. This comment also argued that, although some manufacturers would be required to change product or production processes to comply with the ranges specified in the proposed rule, those manufacturers would not have to make any additional changes if FDA also standardized existing terms.

One manufacturer opposed standardization of the terms—junior, regular, super, and super plus—currently used by a manufacturer whose tampons account for approximately 60 percent of the market. Such standardization, the comment argued, would go unnoticed by the purchasers of that manufacturer's tampons, and, therefore, would dilute the benefit the agency is striving to achieve. The comment further argued that, if any terms were standardized, the agency should instead adopt terminology such as extra light, light to moderate, moderate, moderate to heavy, heavy, and extra heavy, for absorbency ranges A to F, respectively.

FDA has tentatively concluded, based on the comments and on its own analysis, that letter designations and nonstandardized terms would not provide consumers with clear and nonmisleading information about the

absorbency of tampons at the time of purchase. (See section III B, paragraph 7 of this preamble.) FDA agrees with the majority of the comments that the unrestricted combination of currently used absorbency terms with letters might confuse some consumers who would not immediately understand the significance of the letters and would rely instead on the nonstandardized familiar terms. To eliminate this potential problem, the agency considered standardizing currently used terms, but rejected that approach for two reasons. First, there are six ranges for which terms are needed and only three or four (depending on whether junior is included) widely used terms. Second, FDA believes that an effective labeling scheme can be established such that manufacturers may continue to label currently marketed products with their familiar terms without compromising the intent of the rule, which is to facilitate interbrand comparisons.

FDA has tentatively concluded that by requiring the use of new absorbency terms, each of which conveys absorbency information, and by requiring that a new term be on the principal display panel(s), separate from, and more prominent than any other information except the corresponding numerical range of absorbency, the reproposal would ensure truthful, accurate, and nonmisleading labeling and would facilitate accurate interbrand comparisons.

Each principal display panel would be required to contain one of the following terms, each corresponding to a specific range: low absorbency (less than or equal to 6 grams); medium absorbency (from 6 to 9 grams); medium-high absorbency (from 9 to 12 grams); high absorbency (from 12 to 15 grams); very high absorbency (from 15 to 18 grams); and highest absorbency (greater than 18 grams). As discussed in section III F, paragraph 18 of this preamble, FDA proposes to ensure that these new absorbency terms not be confused with existing terminology (e.g., junior, slender, light flow, regular) by requiring that the new absorbency terms be more prominent than, and separate from, any other information on the principal display panel except the corresponding numerical range of absorbency; by requiring that consumers be referred to the location on the package label where further explanation of the new terms and their corresponding ranges would be provided; and by not allowing any information other than the corresponding numerical range of absorbency to be used in conjunction with the new standardized absorbency

terms (e.g., junior, low absorbency would be prohibited).

Because these new absorbency terms would be clear and nonmisleading and because their prominence would be ensured, FDA has tentatively concluded that there is no need to proscribe the use of existing terminology (e.g., junior, slender, light flow, regular). In addition, FDA believes that consumer familiarity with current terms and the absorbency of the products that bear those particular terms provides a useful frame of reference for consumers that would be eliminated if such terms were proscribed.

Although the reproposal would not eliminate the use of current terms, the agency believes that consumers, including first-time users, would focus on the new absorbency information communicated by the new terms on the principal display panel(s), and, aided by the explanation elsewhere on the package label and by the FDA educational campaign (see section III I, paragraph 22 of this preamble), would rely on the new absorbency terms to make interbrand comparisons of absorbency. As stated in section III A, paragraph 4 of this preamble, FDA would regard a product as misbranded if the labeling, by virtue of the use of other absorbency information in conjunction with the required terms, were false, misleading, or otherwise in violation of section 502 of the act (21 U.S.C. 352). Manufacturers might elect to eliminate their current terms, especially after consumers became familiar with the new absorbency terms. If a manufacturer chose to retain its current terms, it would have to ensure that its tampon labeling was neither false nor misleading and was otherwise in compliance with the act.

### C. Absorbency Testing

FDA requested comment (53 FR 37261) on whether a tolerance interval of 90 percent, as opposed to 95 percent as provided in the initial proposal, would be sufficient to ensure that only a small number of tampons of a particular style fell outside the given absorbency range for that style. Several comments addressed this and related issues.

11. Four manufacturers objected to the agency's proposal on the ground that it would not be technically feasible.

The first manufacturer provided an analysis of components of variation which allegedly showed that the total variability in absorbency test data is due largely (85 percent) to the syngyna test rather than to production variability (15 percent). According to the comment,



it would be feasible to establish a 90 percent tolerance interval.

The second manufacturer argued that in addition to demonstrated inherent variability in the syngyna test methodology, there is a significant variance in the absorbent quality of the materials used to make tampons, that humidity levels in storage and production facilities affect absorbency, and that even small variations in the compression process used in manufacturing could affect absorbency. This comment provided summary data on syngyna tests conducted in 1988 using retail products made by its competitors. The summary data purported to show that between 22 and 48 percent of individual tampons fell outside the 2-gram range of absorbency listed on the box. The comment concluded that it was technically feasible only to require that the statistical confidence level be 90 percent that at least 90 percent of the individual tampons within a brand and style be within the labeled range.

The third manufacturer proposed that tolerance intervals be established such that the probability be 95 percent that no more than 5 percent of the tampons in a given package would exceed the upper limit and a 95 percent probability that no more than 20 percent would be below the lower limit. The comment argued that such an approach would allow manufacturers to focus primarily on those aspects of product design or process changes that would ensure that the upper limit is not exceeded, while recognizing that products below the low end of the range do not present as great a risk. The comment requested that FDA, if it failed to accept this proposal, adopt a tolerance interval such that there be a 95 percent probability that 90 percent of the production fell within the labeled range.

The fourth manufacturer maintained that the proposed tolerance interval of 95 percent might be practical for tampons of lower absorbency, but that it would be difficult to routinely conform to that requirement for the two highest ranges because of the normally larger variability in manufacturing for tampons of higher absorbency. This manufacturer recommended either broadening the ranges for the higher categories (e.g., instead of 12 to 15, use 12 to 16) or establishing a 90 percent tolerance interval.

FDA has carefully reviewed the analysis of the components of variation provided by the first manufacturer and believes that the analysis is deficient in several respects. Although a classical component of variation analysis was provided, the manufacturer attempted to

further subdivide the components of error to attribute 15 percent to the product and 85 percent to the test method. To do this, the manufacturer assumed a model for tampon absorbency that attributed actual absorbency only to the dry weight of the fibers in a tampon. FDA believes that this model is overly simplistic because it ignores factors other than dry weight and test method and also assumes that all factors operate independently. As discussed in the preamble to the initial proposal (53 FR 37261) and in the comments summarized elsewhere in this paragraph, production factors other than dry weight, e.g., compression, absorbent quality of the fiber, and humidity, can influence measured absorption. The agency has tentatively concluded that the simple model given, by ignoring these other factors inherent in the manufacturing process and the manufactured product, erroneously imparted the variation from these other factors to the remaining uncontrolled variable, the test method. FDA, therefore, does not accept the numerical results purporting to show that the test method is responsible for 85 percent of the variability.

The agency also has considered the summary data provided by the second manufacturer on its competitors' products. In the agency's view, it is not possible to apply these data to the proposed 3-gram absorbency ranges, because the data relate to 2-gram absorbency ranges. In addition, it is not possible to assess these summary data as they relate to the ability of a manufacturer to establish tolerance intervals based on sampling, because the raw data were not provided.

Further, FDA does not believe that the suggestion to allow up to 20 percent of tampons of a particular brand or style to be below the lower limit of a labeled range would be consistent with providing the consumer a truthful, accurate, and nonmisleading description of the individual tampons being purchased, either as regards the risk of TSS or product effectiveness.

As stated in the preamble to the proposed rule (53 FR 37261), FDA's intent is to ensure that only a small number of tampons of a particular style could fall outside the given absorbency range for that style. For that reason, the agency proposed to require the establishment of tolerance intervals. Such intervals provide limits based on the results of individual test observations in the overall test sample.

Establishing a tolerance interval requires defining both the proportion of individual observations that will be within a given range and the probability

of that proportion occurring. A tolerance interval is necessarily wider than the more common confidence intervals that apply to the standard deviation of the mean of the overall test sample. Thus, when the agency proposed that there be a 95 percent probability that 95 percent of the tampons (95/95) would be within the stated 3-gram (of absorbed fluid) range, the standard deviation of the mean of the test sample of 15 tampons could be no greater than 0.51. (If a manufacturer chose to use a larger sample size, the standard deviation of the mean could be larger than 0.51, but not substantially.) For a tolerance interval such that there was a 90 percent probability that 95 percent of the tampons (90/95) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.55. For a tolerance interval such that there was a 95 percent probability that 90 percent of the tampons (95/90) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.61. For a tolerance interval such that there was a 90 percent probability that 90 percent of the tampons (90/90) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.66.

Using any of these approaches to establish tolerance intervals, therefore, would require that the standard deviation of the mean of the test sample be small compared with the 3-gram range. FDA believes that this fact, coupled with the fact that manufacturers could always target the absorbency of their products at or near the middle of each range, and the data discussed in the preamble to the initial proposal (53 FR 37261), establish that the likelihood is great that only a small number of tampons of a particular style will fall outside of the range established for that style, whether the tolerance interval is 95/95, as first proposed, or 90/95, 95/90, or 90/90, as three manufacturers urged. Thus, FDA has tentatively concluded that there is no substantial difference in public health consequence between any of these tolerance intervals; they would all ensure that consumers would have a high degree of assurance that the risk of TSS is uniform for all tampons of a particular style. Accordingly, there would be no significant public health gain in requiring a 95/95 tolerance interval.

Moreover, FDA has tentatively concluded, based on the comments and on its reevaluation of all the available absorbency test data, that there is enough inherent variability in the



syngyna test method, in the quality of the fibers used to make tampons, and in production methods and conditions, particularly in the manufacture of higher absorbency tampons, to make it technically infeasible for manufacturers to comply with a requirement that there be a 95 percent probability that 95 percent of tampons fall within the labeled range. Such a tolerance interval would correspond to a standard deviation of the mean of the test sample of less than 0.51. On the other hand, the manufacturers' comments appear to establish that a tolerance interval is technically feasible such that there be a 90 percent probability that 90 percent of the tampons fell within the labeled range. Such a tolerance interval would correspond to a standard deviation of the mean of the test sample of less than 0.66. Because it is both adequate to ensure that few tampons will fall outside the labeled range and is technically feasible, FDA is reproposing in § 801.430(f)(1) to require manufacturers to design and implement a sampling plan to yield consistent tolerance intervals such that the probability be 90 percent that at least 90 percent of the absorbencies of the individual tampons within a package were within the range of absorbency stated on the package label.

12. Comments from consumers and three consumer groups argued that FDA should use a sampling scheme that gives the consumer the highest degree of certainty, such as 95 percent, that the individual tampons she is using are within the labeled range of absorbency, because of the serious nature of TSS and the risk of contracting the disease.

FDA believes that it is important to ensure a high degree of certainty that the individual tampon a woman uses is within the range stated on the package label. This certainty facilitates accurate interbrand comparisons and minimizes overlap between distinct absorbency ranges. As discussed in section III C, paragraph 11 of this preamble, FDA has tentatively concluded that establishing a tolerance interval such that there is a 90 percent probability that 90 percent of the tampons fall within the specified range is adequate to provide such a degree of certainty and is technically feasible. As also discussed in that paragraph, FDA has tentatively concluded that there is no significant increase in public health protection between requiring a 95/95, 95/90, 90/95, or 90/90 tolerance interval.

13. One manufacturer and several consumer groups argued that it was essential that consumer product testing be based on individual product unit

values and not on averages of large numbers of units. Another manufacturer objected to using measured values from individual tampons, arguing that it would unnecessarily force manufacturers to target the absorbency of their products to the middle of each range.

FDA has reconsidered the concept of using the average absorbency of a sample (of whatever size) as the basis for establishing that a brand or style is within a labeled range. The agency believes that such an approach is simply a technique for smoothing the variation in individual test results, and cannot be used to provide a high degree of certainty to consumers regarding the absorbency of an individual product. FDA, therefore, disagrees with that approach because it would not adequately describe to the consumer the range of absorbency of the individual tampons in a package of that brand or style. FDA recognizes that using measured values from individual tampons could require a manufacturer to target the absorbency of its product to the middle of each range. This targeting would not be a consequence of using nonoverlapping ranges, but of inadequate quality control. A manufacturer would not be required to target the absorbency of its products to the middle of the range if its quality control was sufficient to ensure that the absorbency of the individual tampons in the package all fell within the same range of absorbency. The agency agrees with the comments that it is essential that tampon testing be based on the results of individual product unit values and not on averages of large numbers of units.

14. A private citizen with a background in statistics complained that the figures in the preamble to the initial proposal used to represent the distribution of absorbencies of tampons were not adequately labeled, that the population tested was not described, and that the graphic technique was inappropriate. The comment also objected to the use of the word "representative" as an adjective to describe "samples" in proposed § 801.430(f)(1), contending that the term "representative" has no meaning in that context and urging that a suitable general term to describe such samples would be "probability." Finally, the comment objected to the use of the term "mean absorbency" in proposed § 801.430(f), introductory text, on the basis that "mean" implies an expectation of a population mean and suggested that the more proper term would be "average absorbency."

As clearly stated in the preamble to the proposal (53 FR 37255), the figures objected to were not intended to convey a detailed picture of particular absorbency data obtained by testing a given number of tampons, but rather were representations of the distribution of absorbencies to demonstrate FDA's concern about overlapping ranges. The agency concludes that the complaint is without merit and therefore does not require any change in the reproposal. FDA agrees that the general term "probability samples" is appropriate and has made that change in reproposed § 801.430(f)(1). The agency does not agree that there is any basis for concluding that the term "mean absorbency" is less proper than the term "average absorbency" for the purpose of describing the sample population, and, accordingly has not changed the reproposal in that respect.

15. Comments on the method proposed to test for absorbency were received from three consumer groups and three manufacturers.

Two consumer groups objected to any characterization of the proposed test method as having been adopted by the American Society for Testing and Materials (ASTM) tampon task force. These comments claimed that the proposed test was developed by the tampon manufacturers in the task force subcommittee on test methods, and that it would be correct to say only that the ASTM tampon task force attempted to develop a test method. These comments, however, supported the use of the test method for the time being, provided that more research be done to improve the absorbency test in light of data submitted on the validity of saline solution as a medium to measure absorbency. A third consumer group argued that the use of saline solution to measure the absorbency of a product that absorbs blood cannot be an accurate gauge of absorbency and that, since absorbency is so vital a factor in the risk of TSS, a test should be required that reflects true absorbency.

One manufacturer supported the use of the proposed absorbency test method, but recommended that a more complete general description of the method, as provided to FDA on April 17, 1986, by tampon manufacturers, be used. Two manufacturers submitted specific comments on the method, relating to the need (1) to specify the condom to be used in the test, (2) to specify the number of times the condom is to be used, (3) to terminate the test when the tampon is saturated and the first drop of fluid can be detected in the folds of the condom, and (4) to discard the test



result if fluid is detected in the folds of the condom before saturation of the tampon.

FDA agrees that the ASTM tampon task force failed to formally approve the syngyna test method for measuring tampon absorbency. As stated in the preamble to the initial proposal (53 FR 37253), ASTM actions regarding the test method were taken only at the subcommittee level. FDA notes that the comment incorrectly indicated that the subcommittee on test methods was comprised solely of manufacturers, since the agency also participated.

FDA disagrees that a reliable and reproducible laboratory test to measure the absorbency of a product that absorbs blood cannot be done using a saline test solution. The scientific data linking TSS risk with syngyna absorbency—data that FDA cited in the preamble to the proposed rule (53 FR 37250)—were obtained using a saline solution. With respect to the need for additional research regarding absorbency testing methodology, FDA does not intend to sponsor or undertake any such research of its own because the existing method adequately measures relative absorbencies. As FDA stated in the preamble to the proposed rule (53 FR 37261), however, the agency will consider citizen petitions proposing alternative test methods, and repropose § 801.430(f)(3) would provide for the use of such methods in certain circumstances.

FDA has reviewed the detailed general description of the syngyna test method and the specific comments on the method that were submitted and agrees that some clarification is required. Accordingly, repropose § 801.430(f)(2) would: (1) Specify that the unlubricated condom to be used in the test is one with a tensile strength between 17 Mega Pascals (MPa) and 30 MPa as measured according to the standard procedure in the existing ASTM standard for determining tensile strength of condoms (American Society for Testing and Materials, D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"), which is incorporated by reference in accordance with 5 U.S.C. 552(a); (2) require that the test be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon; (3) provide that the test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated; and (4) require that the condom be replaced after 10 tests or at the end of each testing day, whichever occurs first.

#### D. Ingredient Labeling

16. Five consumer groups, numerous individual consumers, and two manufacturers responded to the request for comment (53 FR 37253) on the need for ingredient labeling.

Consumer groups and some individual consumers argued that all materials, additives, and fragrances should be listed on the product label so that consumers can choose the products they want to purchase or avoid on the basis of which ingredients are known to be or suspected of being hazardous, as well as which ingredients have the potential for causing allergic reactions, sensitivity, or irritation. On the other hand, several individual consumers argued against ingredient labeling, some stating that there were no data of which they were aware suggesting the need, others maintaining that it was simply not as important as absorbency labeling. One group of consumers claimed that consumers probably would not use ingredient labeling because concerns about ingredients were not sufficiently important.

Two manufacturers argued that there was no legal requirement or current regulatory basis for mandating ingredient labeling of tampons. These comments noted, however, that manufacturers, in response to consumer interest, have voluntarily implemented an ingredient labeling system for tampons, and argued, on that basis as well, that there is no need for FDA to require such labeling in any final rule.

None of the comments favoring ingredient labeling cited, discussed, or submitted any data showing an association between any ingredient in any currently marketed tampon and any risk to health, including allergic reaction, sensitivity, or irritation, and FDA is unaware of any such data. Moreover, none of the comments provided any legal theory under which the agency could require ingredient labeling for tampons. Absent information indicating that the disclosure of tampon ingredients on package labeling is necessary for the safe or effective use of the product, or that the omission of such information is material to the safe or effective use of tampons, FDA has tentatively concluded that it does not have the authority to require tampon manufacturers to list ingredient information on product labeling.

#### E. Effective Date

17. Several comments addressed the proposed 6-month effective date for any final rule.

Three manufacturers claimed they would have difficulty meeting a 6-month effective date because they would have to make labeling and product design changes that would affect manufacturing, including machinery, and testing protocols. They requested effective dates ranging from 12 to 24 months after publication of any final rule. One manufacturer commented that a 6-month effective date was appropriate.

Consumer groups, asserting that the risk of TSS would be greatly reduced simply by letting women know the absorbency of tampons, requested various effective dates ranging from 0 to 90 days.

The reproposal would not require significant reformulation of tampons; most currently marketed products would fall within the nonoverlapping ranges set forth in the reproposal. (See section III B, paragraphs 5 and 6 of this preamble.) The agency also believes that the testing methodology required by the reproposal has been accepted by manufacturers and should not be a delaying factor, based on successful interlaboratory comparisons in which manufacturers (and FDA) participated as part of the ASTM tampon task force. In addition, because appropriate quality assurance programs have been required of tampon manufacturers since the device current good manufacturing practice regulations (21 CFR 820.20) became effective in 1978, manufacturers would be faced only with the modification of existing quality assurance programs and not with the creation of new ones. For these reasons, and given the public health importance of tampon absorbency information, FDA believes that any time beyond 6 months would be neither necessary nor appropriate for implementation of the provisions of any final rule based on the reproposal. Accordingly, FDA has retained in the reproposal the 6-month effective date specified in the initial proposal.

#### F. Placement of Labeling

Many comments addressed the placement and prominence of absorbency information on tampon labeling, with suggestions regarding size, color, and content of the information required by any final rule.

18. Six consumer groups and many individual consumers argued that all information about tampon absorbency should appear prominently on the front panel of the tampon box, and that all required safety labeling should be set off from promotional material in such a way as to make clear that the safety



information is not promotional. To ensure prominence, various comments suggested a pictorial system, specified wording, color-codes, bold and large lettering, print in English and Spanish, and raised print for the blind.

FDA has tentatively concluded that information about tampon absorbency should appear prominently on the principal display panel(s) of the tampon box, and that this safety related information should be set off from other descriptive information, such as slender, super, or for medium flow. Accordingly, § 801.430(e) (1) and (2) of the reproposal would require that the new absorbency terms be on the principal display panel(s), that the new absorbency terms be in a prominent and conspicuous location separate from other information not required by the reproposal, and that reference be made with the new absorbency term on the principal display panel(s) to the location on the package of the explanation that would be required by repropose § 801.430(e)(3). Reproposed § 801.430(e)(2) would allow manufacturers to include on the principal display panel(s), along with and as prominently as the new absorbency term, the numerical range of absorbency to which the new term corresponds, but would proscribe the use of any other descriptive information placed so as to modify the term.

The agency has taken this approach before in order to avoid misleading labeling. For example, FDA regulations in 21 CFR 330.1(c)(2)(i) require that approved indications for over-the-counter drugs be placed in a "prominent and conspicuous" location of the labeling, and in a boxed area if used in conjunction with the term "APPROVED USES."

19. One manufacturer agreed with the proposed rule that the letter designation should appear on all package panels where a term of absorbency is used, but stated that the word "Absorbency," as in "Absorbency C," should be required only on the front panel. One consumer group argued that the phrase "absorbency rating" should appear before the letter designation. Another consumer group argued that one manufacturer's current labeling, which includes the following phrase: "tampons come in a full range of absorbencies and it is suggested you use the lowest absorbency that meets your needs \* \* \*," includes safety information that is not sufficiently set off from the promotional material.

In the reproposal, the agency has removed the requirement for letter designations. (See section III B, paragraph 7 of this preamble.) The

agency, however, is now proposing to require that the new standardized terms that would be required by repropose § 801.430(e)(2) be placed on labeling in all locations where other descriptive information is stated (§ 801.430(e)(4)). Each term would be required to be accompanied by the word "absorbency." FDA believes these requirements are necessary to reinforce consumer awareness and understanding of the new standardized terms. On the other hand, FDA believes that it would be inappropriate to specify the exact wording of all the labeling that would be required by the reproposal to describe the use of the new terms and the ranges to make interbrand comparisons. Accordingly, the reproposal would afford manufacturers flexibility to provide the information required in repropose § 801.430(e)(3) as would benefit their products. Also, in that regard, FDA does not believe that the language quoted in the comment makes the safety information less prominent or legible.

#### G. Vending Machines

20. In the preamble to the initial proposal (53 FR 37261), FDA invited comment on whether to continue to exempt tampons sold in vending machines from the labeling requirements of current § 801.430 and on whether to exempt such tampons from the requirements of any final rule.

One consumer group and several individual consumers argued that the current vending machine exemption regarding TSS information should be revoked. These comments maintained that, as a minimum, the TSS information required by current § 801.430 should be on the outside of the vending machine just as the Surgeon General's warning about smoking appears on cigarette vending machines.

Six consumer groups and several individual consumers argued that tampons sold in vending machines should not be exempt from the absorbency labeling requirements of any final rule. These comments claimed that there is a need for wide dissemination of information about the association of tampon absorbency and TSS, that women could use the knowledge imparted by the labeling to decide to purchase and use a menstrual pad as opposed to a tampon, and that the cost of new labeling to manufacturers would be minimal. Other comments argued that a maximum absorbency should be established for tampons sold in vending machines, while one consumer commented that there was no need to label tampons sold in vending machines.

One manufacturer urged that the current exemption for tampons sold

through vending machines be continued and extended to the absorbency information required by any final rule. The manufacturer argued that tampons are purchased from vending machines in individual units based on immediate need, and that whatever product is available is selected independent of brand or absorbency, obviating the need for additional labeling.

FDA disagrees that it is appropriate to set a maximum allowable absorbency for tampons sold in vending machines, because no public health basis for so doing has been established. The agency has tentatively concluded that there would be only a minimal potential benefit to consumers in requiring that all TSS and absorbency information required by current § 801.430 be provided on labeling for tampons sold through vending machines, because only a small fraction of tampons are sold through such machines. On the other hand, FDA believes that it is important to provide consumers with consistent information and, therefore, that it would be inappropriate to have tampons sold through vending machines bear only nonstandardized labeling, such as super, that would mean different things from brand to brand. Accordingly, repropose § 801.430(g) would not exempt tampons sold through vending machines from the provisions of repropose paragraph (e)(4) of this section. Thus, if a term of absorbency other than the applicable term required by the reproposal, such as super, were used on a tampon sold through a vending machine, e.g., on an individual wrapper, repropose § 801.430(e)(4) would require that the new absorbency term, corresponding to the range of absorbency listed in paragraph (e)(1) of that section, also be used prominently and conspicuously in a separate location. Conversely, if a nonstandardized term were not used on a tampon manufactured for sale through a vending machine, then use of the new absorbency term would not be required.

#### H. Public Citizen Health Research Group Petition

21. All comments specifically addressing the August 20, 1987, citizen petition from the Health Research Group (HRG) (see 53 FR 37252 and 37253) concerned issues relating to the initial proposal and have been addressed elsewhere in this preamble. FDA believes that the reproposal, requiring uniform absorbency testing and a standardized method of expressing absorbency, is both technically feasible and adequate to address the need for public health protection. It would enable women to compare absorbencies



between brands and styles and to choose the lowest absorbency needed and, thus, reduce their risk of TSS. To the extent that the reproposal does not include provisions requested by HRG in its August 20, 1987, citizen petition, the agency is tentatively denying the petition.

#### I. Education

22. Three consumer groups and many individual consumers urged FDA to implement a public education effort to inform users of the association between tampon absorbency and TSS risk. Specific suggestions included updating FDA's poster campaign, making public service announcements, disseminating brochures, publishing articles in women's magazines, and requiring store displays. One comment noted that any education effort should be repeated at regular intervals because there are always girls who are beginning menstruation and need the information.

FDA agrees with the intent of these comments. With the promulgation of any final rule, the agency would employ a variety of educational mechanisms to provide updated information to new tampon users, higher risk groups for TSS such as young women and teenage girls, and the general public. Accordingly, the agency would update and reprint its TSS poster learning unit, and target distribution of the poster to secondary school health teachers, nurses, and special interest groups such as Girl Scouts and Campfire Girls. Additional approaches could include a video news release, and a fact sheet that would be used by CDC in its Teenage Health Teaching Modules, by health editors of popular magazines and newspapers, by pharmacies, and by State maternal and child health offices. FDA believes that these informational activities will advise and remind women about TSS, its symptoms, what to do if symptoms appear, the advisability of using the least absorbent tampon needed to control menstrual flow, and, assuming that it promulgates a final rule requiring new standardized absorbency terms, how to use the new terms to select tampons and, thereby, help eliminate any consumer confusion.

#### J. Miscellaneous

23. One comment recommended that "ounces" be used instead of "grams" to indicate the quantity of fluid absorbed.

The purpose of the determination of the amount of fluid absorbed by a tampon is to provide a quantitative measure of absorbency that can be used in making interbrand comparisons. FDA does not believe that it is necessary to use English system units (ounces) to do

that, and has not adopted the recommendation in the reproposal.

24. Several comments recommended that the agency require warnings about possible abrasions or lacerations of the vaginal wall as a result of tampon use, and specific labeling directing users to wash their hands, remove tampons at specified time intervals, refrain from using tampons for a period of time after giving birth, and so forth.

None of these recommendations directly bears on the issue of tampon absorbency-related TSS risk addressed by the proposed and repropoed rules. Moreover, the comments did not provide any evidence to support such additional labeling requirements or to demonstrate an association between the claims underlying the recommendations and tampon absorbency-related TSS risk. FDA notes that it is unaware of any data demonstrating an association between tampon use and injury to the vaginal wall. Therefore, the agency has not adopted these recommendations in the reproposal.

#### K. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4:00 p.m., Monday through Friday.

1. Gaventa, S., et al., "Active Surveillance for Toxic Shock Syndrome in the United States, 1986," *Reviews of Infectious Diseases*, 11 (Supplement 1):S28-S34, January-February 1989.

2. Reingold, A. L., et al., "Risk Factors for Menstrual Toxic Shock Syndrome: Results of a Multistate Case-Control Study," *Reviews of Infectious Diseases*, 11 (Supplement 1):S35-S42, January-February 1989.

#### IV. Environmental Impact

The agency has tentatively determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### V. Economic Impact

As stated in the preamble to the initial proposal (53 FR 37262), FDA examined the economic consequences of the proposal in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule is not a major rule under the Executive Order. No comments were received in response to that statement or finding, or to FDA's assessment. Since its initial examination of the economic consequences of the

proposed rule, which estimated direct costs of \$66,000 on each tampon manufacturer, FDA has revised its assessment to take into account changes in the proposal reflected in this reproposal. FDA now estimates that the reproposal would impose direct costs of \$75,000 on each tampon manufacturer. Therefore, the agency continues to conclude that any final rule based on the reproposal would not be a major rule under the Executive Order. The agency also has considered the effect that this reproposal would have on small entities including small businesses. The agency believes that only one of the affected manufacturers meets the definition of a small entity under the Regulatory Flexibility Act (Pub. L. 96-354), and no comments were submitted on the matter. Therefore, FDA certifies under the Regulatory Flexibility Act that the reproposal would not have significant economic impact on a substantial number of small entities. A further description of these new costs and the methods for estimating them can be found in the revised threshold assessment on file with the Dockets Management Branch (address above).

#### VI. Paperwork Reduction Act

Section 801.430 (e), (f), and (g) of this reproposal contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this reproposal to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

#### VII. Request for Comments

Interested persons may, on or before August 11, 1989, submit to the Dockets Management Branch (address above) written comments regarding this reproposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.



**List of Subjects in 21 CFR Part 801**

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 801 be amended as follows:

**PART 801—LABELING**

1. The authority citation for 21 CFR Part 801 is revised to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371); 21 CFR 5.10, § 801.420 also is issued under secs. 201(h), (k), (m), and (n), 501(c), 502, 519, 520(e), 704, 52 Stat. 1041 as amended, 1050-1051 as amended, 67 Stat. 477 as amended, 90 Stat. 564-565, 567, 575 (21 U.S.C. 321 (h), (k), (m), and (n), 351(c), 352, 360i, 360j(e), 374); § 801.430 is issued under secs. 201(n), 502, 701(a), 52 Stat. 1041 as amended, 1050-1051 as amended, 1055 (21 U.S.C. 321(n), 352, 371(a)); 21 CFR 5.11.

2. Section 801.430 is amended by revising paragraph (b), the introductory text of paragraph (d), paragraphs (d)(2), (d)(3), and (d)(4), by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them, and by adding new paragraphs (e) and (f) to read as follows:

**§ 801.430 User labeling for menstrual tampons.**

(b) Data show that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious adverse effects of TSS, menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency as set forth in paragraph (f) of this section.

(d) The labeling of menstrual tampons shall contain the following consumer information prominently and legibly, in such terms as to render the information likely to be read and understood by the ordinary individual under customary conditions of purchase and use:

(2) The risk of TSS to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls, the estimated incidence of TSS of 1 to 17 per 100,000 menstruating

women and girls per year, and the risk of death from contracting TSS;

(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS;

(4) Avoiding the risk of getting tampon-associated TSS by not using tampons, and reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods; and

(e)(1) The principal display panel(s) (as defined in § 801.60) of a package of menstrual tampons shall bear one of the following six absorbency terms representing the absorbency of the production run, lot, or batch as measured by the test described in paragraph (f)(2) of this section, and a reference to the location on the package label of the information required by paragraph (e)(3) of this section:

Ranges of absorbency in grams <sup>1</sup>	Corresponding term of absorbency
6 and under .....	Low absorbency.
6 to 9 .....	Medium absorbency.
9 to 12 .....	Medium-high absorbency.
12 to 15 .....	High absorbency.
15 to 18 .....	Very high absorbency.
Above 18 .....	Highest absorbency.

<sup>1</sup> These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

(2) The absorbency term required by paragraph (e)(1) of this section shall be more prominent than, and may not be modified by, any other descriptive information on the principal display panel(s), other than its corresponding numerical range of absorbency, and shall be in a prominent and conspicuous location, placed apart from any other information not required by this paragraph except its corresponding numerical range of absorbency.

(3) The package label shall include an explanation of the range of absorbency and a description of how consumers can use the range of absorbency, and its corresponding absorbency term, to make comparisons of absorbency of tampons to allow selection of the tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

(4) If a term of absorbency other than that required by paragraph (e)(1) of this

section is used in labeling, such as on an individual tampon wrapper, the absorbency term specified in paragraph (e)(1) of this section shall also be used.

(f) A manufacturer shall measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) of this section and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

(1) A manufacturer shall design and implement a sampling plan that includes collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability is 90 percent that at least 90 percent of the absorbencies of individual tampons within a package are within the range of absorbency stated on the package label.

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the standard procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"<sup>1</sup> for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. The condom is pulled through until all slack is removed. The tip of the condom is cut off and the remaining end of the condom is stretched over the end of the tube and secured with a rubber band. A preweighed (to the nearest 0.01 gram) tampon is placed within the condom membrane so that the center of gravity of the tampon is at the center of the chamber. An infusion needle (14 gauge) is inserted through the septum created by the condom tip until it contacts the end of the tampon. The outer chamber is filled with water pumped from a temperature-controlled waterbath to maintain the average temperature at  $27 \pm 1$  °C. The water returns to the waterbath as shown in Figure 2. Syngyna fluid (10 grams sodium chloride, 0.5 gram Certified Reagent Acid Fuchsin, 1,000 milliliters distilled

<sup>1</sup> Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.



water) is then pumped through the infusion needle at a rate of 50 milliliters per hour. The test shall be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon. (The test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated.) The water is then drained and the tampon is removed and immediately weighed to the nearest 0.01 gram. The absorbency of the tampon is determined by subtracting its dry weight from this value. The condom shall be replaced after 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

BILLING CODE 4160-01-M



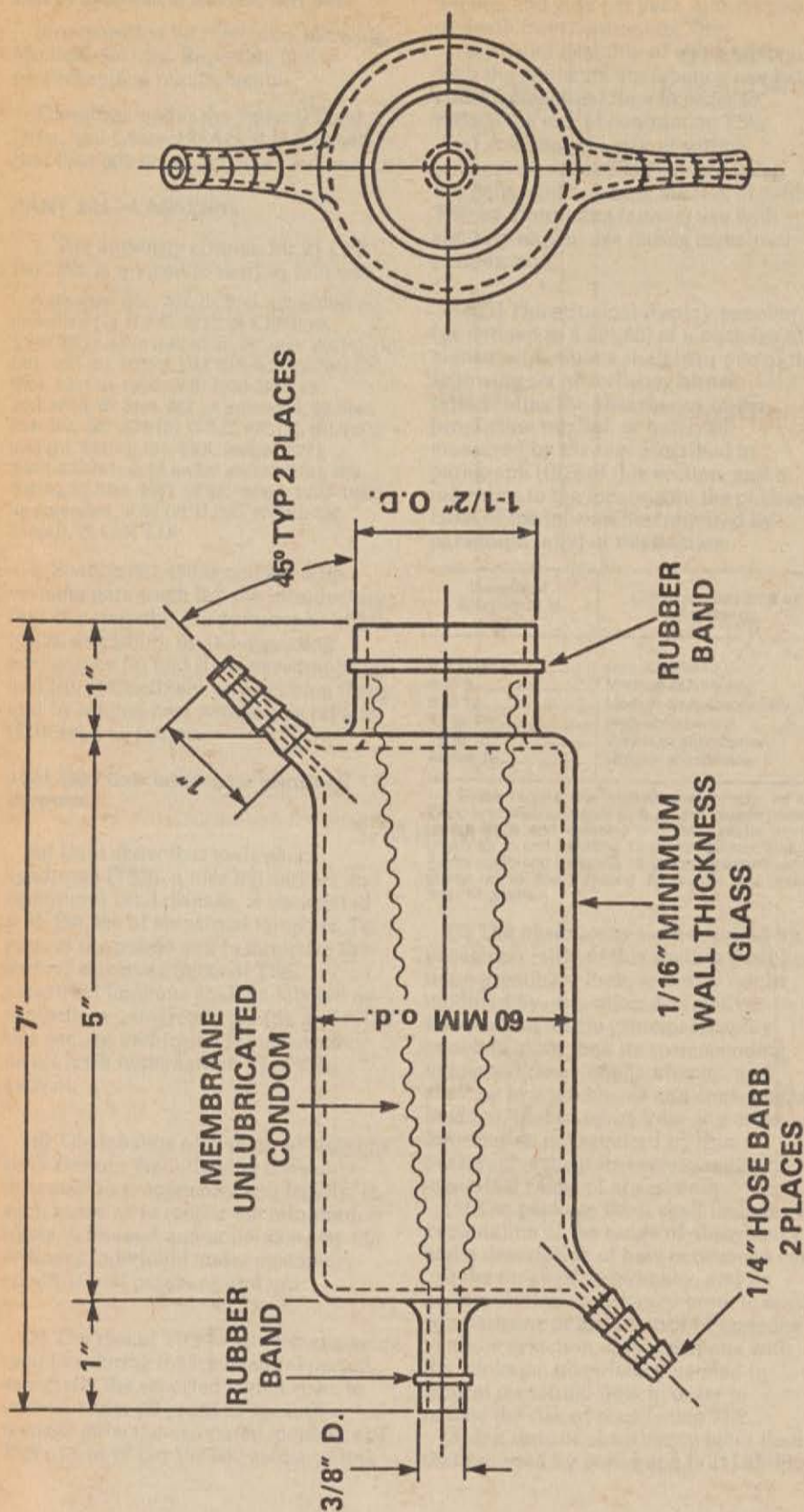


FIGURE 1 — SYNGYNA TEST CHAMBER



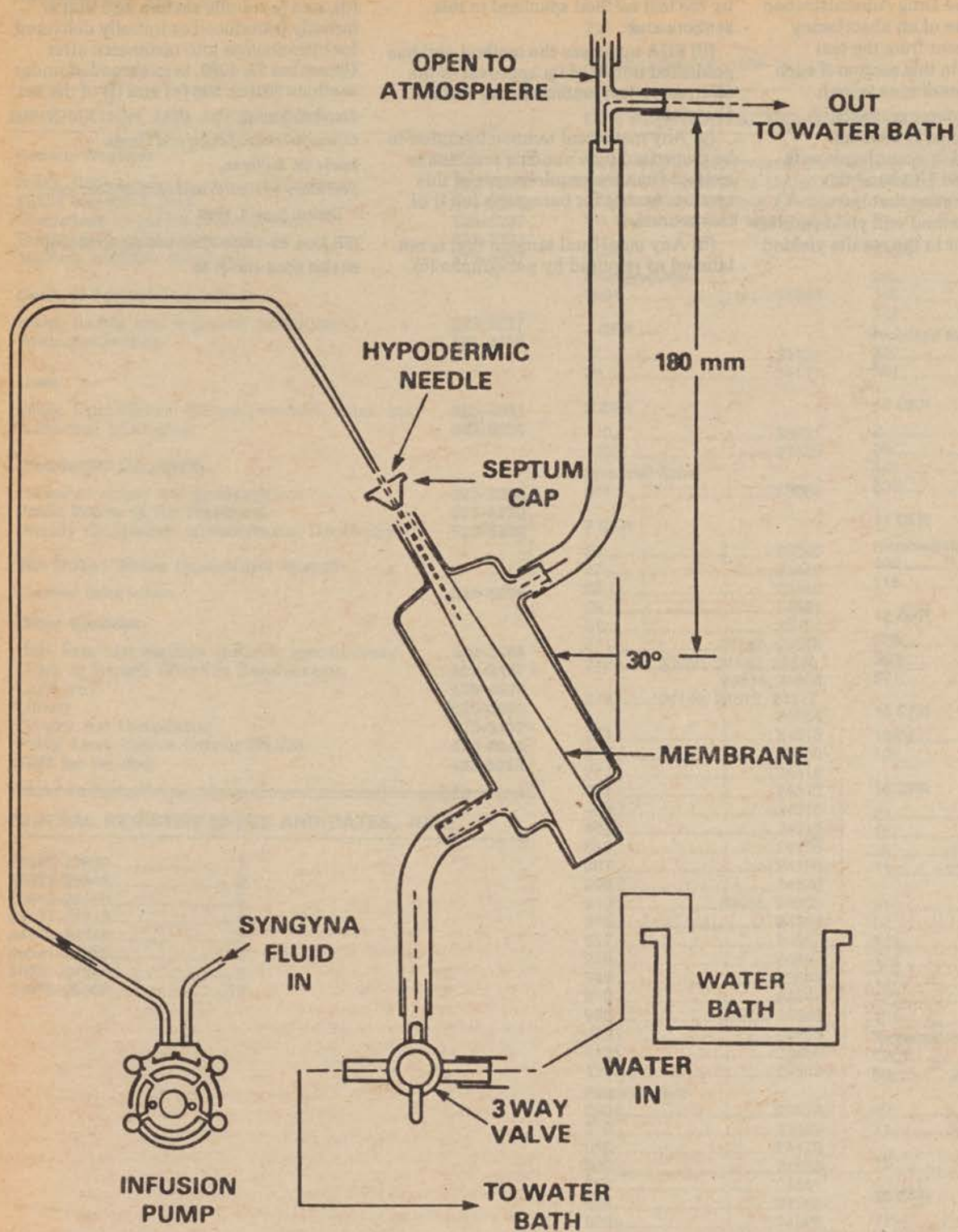


FIGURE 2—SYNGYNA TEST SET-UP



(3) The Food and Drug Administration may permit the use of an absorbency test method different from the test method specified in this section if each of the following conditions is met:

(i) The manufacturer presents evidence, in the form of a citizen petition submitted in accordance with the requirements of § 10.30 of this chapter, demonstrating that the alternative test method will yield results that are equivalent to the results yielded

by the test method specified in this section; and

(ii) FDA approves the method and has published notice of its approval of the alternative test method in the **Federal Register**.

(g) Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section, except for paragraph (e)(4) of this section.

(h) Any menstrual tampon that is not labeled as required by paragraphs (c),

(d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after December 12, 1989, is misbranded under sections 201(n), 502 (a) and (f) of the act.

Frank E. Young,

*Commissioner of Food and Drugs.*

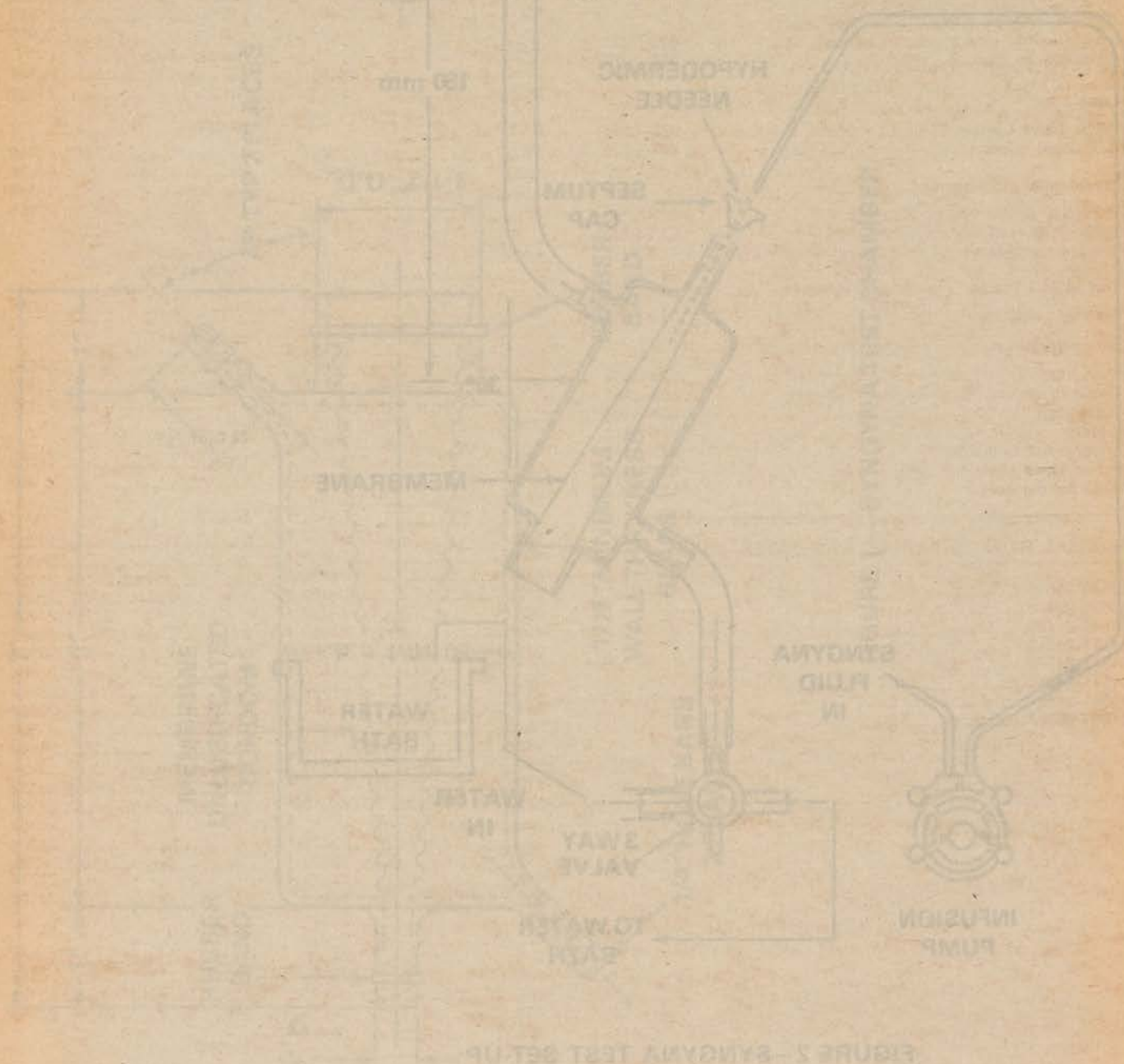
Louis W. Sullivan,

*Secretary of Health and Human Services.*

Dated: June 3, 1989.

[FR Doc. 89-13959 Filed 6-8-89; 10:39 am]

BILLING CODE 4160-01-M





# Reader Aids

Federal Register

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Monday, June 12, 1989

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	<sup>1</sup> Jan. 1, 1989
4	14.00	Jan. 1, 1988
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27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	<sup>2</sup> Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
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<b>9 Parts:</b>		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
<b>10 Parts:</b>		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	<sup>3</sup> Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	<sup>2</sup> Jan. 1, 1988
<b>12 Parts:</b>		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
<b>14 Parts:</b>		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988

Title	Price	Revision Date
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
<b>15 Parts:</b>		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
<b>16 Parts:</b>		
0-149	12.00	Jan. 1, 1989
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
<b>17 Parts:</b>		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
<b>18 Parts:</b>		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
<b>19 Parts:</b>		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
<b>20 Parts:</b>		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
<b>21 Parts:</b>		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
<b>22 Parts:</b>		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
<b>24 Parts:</b>		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
<b>26 Parts:</b>		
§§ 1.0-1.160	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
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§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	<sup>4</sup> Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
<b>27 Parts:</b>		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988



Title	Price	Revision Date	Title	Price	Revision Date
<b>29 Parts:</b>			<b>42 Parts:</b>		
0-99.....	17.00	July 1, 1988	1-60.....	15.00	Oct. 1, 1988
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500-899.....	24.00	July 1, 1988	400-429.....	21.00	Oct. 1, 1987
900-1899.....	11.00	July 1, 1988	430-End.....	22.00	Oct. 1, 1988
1900-1910.....	29.00	July 1, 1988	<b>43 Parts:</b>		
1911-1925.....	8.50	July 1, 1988	1-999.....	15.00	Oct. 1, 1988
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1927-End.....	24.00	July 1, 1988	4000-End.....	11.00	Oct. 1, 1987
<b>30 Parts:</b>			<b>44</b>	18.00	Oct. 1, 1987
0-199.....	20.00	July 1, 1988	<b>45 Parts:</b>		
200-699.....	12.00	July 1, 1988	1-199.....	17.00	Oct. 1, 1988
700-End.....	18.00	July 1, 1988	200-499.....	9.00	Oct. 1, 1988
<b>31 Parts:</b>			500-1199.....	24.00	Oct. 1, 1988
0-199.....	13.00	July 1, 1988	*1200-End.....	17.00	Oct. 1, 1988
200-End.....	17.00	July 1, 1988	<b>46 Parts:</b>		
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630-699.....	13.00	<sup>6</sup> July 1, 1986	200-499.....	20.00	Oct. 1, 1988
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<b>33 Parts:</b>			0-19.....	18.00	Oct. 1, 1988
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0-17.....	21.00	July 1, 1988	<b>49 Parts:</b>		
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<sup>2</sup> No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

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<sup>4</sup> No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

<sup>5</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

<sup>7</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.







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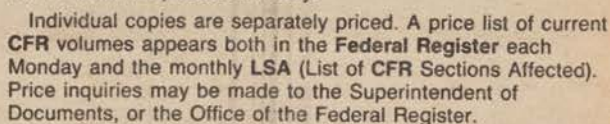
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